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LAWS

Advocate High Court
Jammu & Kashmir
Srinagar,

OF

JAMMU AND KASHMIR.

(Being a collection of all the enactments, whether passed by the Praja Sabha and assented to by His Highness the Maharaja Bahadur or made and issued by His Highness, and in force in the Jammu and Kashmir State).

Vol. I. 1945 to 1977.



Published under authority of His Highness' Government, Jammu and Kashmir.

JAMMU:

Printed at The Ranbir Government Press-2-10-97-1,000

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Errata.

Page 2 in line 14 for 'Programmes' read 'Programme'.

Page 32 in Form D line 7 for 'Regulation' read 'Act'.

Page 36 in lines 2, 6, 24 and 28 for 'Bank' read 'Banks'.

Page 36 in line 5 for 'India' read 'Indian'.

Page 130 in line 2 delete mark '2' before the words [the Government].

Page 369 in footnotes line 2 delete 'the' before 'His High-ness'.

Page 373 in line 20 for 'Book' read 'Books'.

Page 374 in line 1 for 'Book' read 'Books'.

Page 381 in line 33 delete ';' and fut '-' between 'afore-said' and 'eight'.

Page 382 in line 4 put '-' between the words 'assessed' and 'the'.

Page 382 in line 24 for 'Haqi' read 'Haq-i-'.

Page 395, after section 35 draw a line to show that printed matter below that line is separate from the text of the Act.

Page 395, in last line of fcotnotes for '1905' read '1995'.

Fage 410 in footrotes line 2 jor '1996' read '1986'.

Page 495 in line 1 fcr '1971' read '1977'.

Page 502 in footnotes line 1 fcr '5 ()' read '5 (1)'.

Page 663 in footnotes line 1 for '4-L/86' read '3-L/86'.

Page 891 in section 15 para 2 for '(3)' read '(2)'.

Page 892 in section 20 line 1 delete '(1)'.

Page 982 in section 253 line 4 delete '(1)'.

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DONATED

By

PANDIT SHAMBOO NATH DAR. (1901 — 1969)

ADVOCATE, and former President SRINAGAR MUNICIPAL COUNCIL

Advo Course Srinagar.

Jammu & Kashmir Srinagar.

PRELIMINARY NOTE.

As the laws of the Jammu and Kashmir State were found scattered in various Regulations, Notifications Orders, Ailanns etc. made and promulagated by His Highness the Maharaja Bahadur from time to time, in addition to the Regulations enacted by the State Legislative Assembly called the I --,- since its inauguration in 1934, it was sometimes very difficult to trace the correct and up-to-date law on any particular subject and, as amendments were formerly generally made by Notifications in the Gazette which were not separately published, even when one traced any particular Ailan or Order one could not be sure that it had not been repealed or amended Some of these Notifications, Orders and Circulars could not be found in every office or court and even copies of some of the old Regulations were extinct. In order to remove this long felt difficulty Government decided to publish a collection of all the existing laws of the State in book form, and for this purpose the services of Lala Badri Nath, Deputy Registrar High Court, were placed at the disposal of the Law Department. Lala Badri Nath was entrusted with the duty of collecting all the laws and arranging them for publication. He has done this difficult task under the personal supervision of the Hon'ble Law Minister and has also revised the proofs. It is hoped that this publication will meet a long felt need and will be of great help to the administration and the public.

2. All the unrepealed Acts of the last fifty years i. e. from 2nd Assuj 1946/ 16th September, 1889, when the first issue of the Government Gazette was published, as also all important Notifications, Orders etc. having the force of law, have been included in this book. All amendments have been incorporated in the text of the original Acts and, with respect to each amendment, a foot-note has been appended giving reference to the amending enactment as well as to the issue of the Government Gazette in which the amending enactment was published. This has obviated the necessity of publishing separately these amending enactments which having served their purpose need no longer remain on the statute book. Acts upto 1995 have been expressly repealed by the Repeal of Certain Enactments Act, 1996. Even those not so formally repealed have been omitted from this book. In the case of formal amendments of general application, such as substitution of "Government Gazette" for "State Gazette", "Act" for

"Regulation" etc., reference to amending enactments has not been given in the foot-notes as that would have served no useful purpose and would have resulted in unnecessary congestion. A list of such amending enactments has, however, been separately given below.

3. Acts have been arranged in chronological order in this book, which is being published in three volumes, and in the beginning of each volume besides a chronological table of the contents, an alphabetically arranged list of Acts contained in

the volume has been added for facility of reference.

4. Wherever in any Act there is a reference to another Act since repealed reference to the corresponding section of the

present Act is also given in a foot-note.

5. The text of the Acts is the original text as passed or enacted, but in the case of certain old Acts or Notifications which were originally published in Urdu, an English translation has been made and incorporated in this book, with a note

in the beginning to that effect.

- 6. Legislative powers in the State have always been inherent in His Highness the Maharaja Bahadur of Jammu and Kashmir and no piece of legislation is complete unless sanctioned by His Highness in one form or another. With respect to every enactment an entry has been made that it was so sanctioned or assented to, giving date of receiving the assent or reference to order conveying sanction of His Highness. Difference in language of these entries is due to the different forms of administration of the State prevailing at different times.
- 7. Every care has been taken to incorporate all the amendments in the text but in view of the difficulties encountered in collecting these amendments scattered here and there in the records of the last fifty years the possibility of an occasional mistake or omission cannot altogether be ignored. It is, therefore, requested that if any mistake is detected, it may kindly be intimated to the Secretary to Government, Law Department, for issuing a correcting slip.

SECRETARY TO GOVERNMENT,

JAMMU.

Law Department.

List of Amending Enactments or provisions referred to in para 2 of the Preliminary Note.

- "Jammu and Kashmir Government Notification 1-L/1982, published in Gazette" substituted for Government Gazette dated 5th Gazette". Jeth 1982.
- 2. Notification 11-L/1984, published in (i) "His Highness' Government Jammu and Kashmir" substituted for-Government Gazette dated 9th Magher 1984.
 - "His Highness in Council",
 - "His Highness the Maharaja Sahib in Council",

"State

- "His Highness the Maharaja Sahib Bahadur in Council",
- "His Highness the Maharaja Bahadur in Council",
- "His Highness the Maharaja in Council",
- "The Council",
- "The State Council",
- "The Jammu and Kashmir State Council".
- (ii) "Government" substituted for "Durbar", "Kashmir Durbar", "Jammu and Kashmir Durbar".
- 3. Notification published in Govern-"District Judge" or "Sessions Judge" ment Gazette dated 5th Jeth 1985. as the case may be, substituted for "Chief Judge".
- 4. Notification published in Government Gazette dated 10th Sawan 1986.
- Section 2(ii) of Act II of 1993.

Advocate High Court

Jammu & Kashmir

Srinager.

- "Inspector General Customs and Excise" substituted for "Superintenddent Customs and Excise".
- "Right of prior purchase" substitutted for "pre-emption".
- Section 31(4) of Act XIV of 1996. "Act" substituted for "Regulation".

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THE JAMMU AND KASHMIR GOVERNMENT GAZETTE ACT, 1945.

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[Translated from original in Urdu published in Government Gazette dated 2nd Assuj 1946.]

THE JAMMU & KASHMIR GOVERNMENT GAZETTE ACT, 1945.

Act No. XII of 1945.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council on 14th Phagan 1945).

Whereas it is expedient for the better administration to start the publication of Government Gazette within the State, His Highness in Council is pleased to command as follows:—

1. This Gazette shall be called the '[Jammu and Kashmir Government Gazette].

2. It shall be published every week on Monday unless [the Government] fix any other day in this behalf.

Title of the Gazette was substituted by Notification 1-L 1982 published in Government Gazette 5th Jeth 1983 for "State Gazette".

No. 21, dated 4th July 1937 published in Government Gazette dated 10th Cawan 1944.

"In Sections 2, 3, and 4 for the words 'His Highness in Council' the words "the Government" substituted by Act X of 1996 published in Government Gazette dated 15th Bhaden 1996.

3. There shall be published in the Gazette all Ains and Orders relating thereto duly passed by '[the Government], all Departmental Orders, Notifications and Circulars, appointments of Gazetted officers and their transfers, leaves, dismissal and suspension.

4. This Gazette will have as many parts as necessary.

IN PART I. All Ains and Orders issued under the authority of His Highness and [the Government] shall be published.

In Part II. Commands relating to the movement of the Army issued from time to time under the authority of '[the Government], Orders of the Revenue, Finance and Commerce, Public Works, Judicial and other Departments relating to the administration of the State shall be published.

IN PART III. The tour programmes of His Highness and that of the High British Indian Officers such as that of the Lieutenant Governor, the Governor General of India, the Commander-in-Chief of India, shall be published if His High-

ness so direct.

IN PART IV. The Notifications issued by Civil, Revenue and Criminal Courts for the information of the litigant public

shall be published.

5. The Officer-in-Charge of the Press, shall be responsible for the proper and timely publication of the matters pertaining to each department and for the correctness of every

order printed therein.

³6. The notices issued by the Civil Courts in pursuance of the provisions of the law in force may be published subject to payment of the charges at the rate of annas 2 per line per insertion. The charges shall be realized by the Civil Courts from the person at whose request a notice is issued and amount realized shall be remitted to the Superintendent Press.

³7. Any member of the Public may, on an application to the Officer-in-Charge of Press, get his advertisements published on payment of the charges at the rate of annas 2 per line

per insertion.

8. A copy of the Gazette shall be supplied free of cost to— Prime Minister, Commander-in-Chief, Members of the Council.

Governors,

Wazir-i-Wazarats, Presiding Officers of the Courts,

^{&#}x27;In Section 2, 3, and 4 for the words "His Highness in Council" the words "the Government" Substituted by Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

The present arrangement of the Gazette is different.
For present rates see Finance Department Notification No. 21, dated 4th July, 1927 published in Government Gazette dated 10th Sawan 1984.

Revenue Officers, Tehsildars, Munsiffs, Public Prosecutors, Inspectors of Schools, and Higher Police Officers.

All officers in receipt of free supply of the Gazette shall keep bound volumes of the issues of the Gazette duly collected

at the end of the year.

19. Any person may subscribe to the Government Gaz-

ette on payment of a subscription of Rs. 6 per annum.

10. All orders on the annual reports of Revenue, Judicial, Military, Public Works, Police, Jail and Medical Departments passed by '[the Government], shall be published in the Gazette, if their publication is sanctioned by 'the Government].

11. Every entry in the Gazette shall be presumed to have been made under the orders of a competent authority. An order published in the Gazette may be proved to have been issued by production of a copy of the Gazette in which it may be found printed.

12. The ³[Government] shall frame proper rules for the

regular publication of the Gazette.

THE RULES REGARDING USE OF FLOATING SKINS, 1946.

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RULES.

RULES.

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- Exemption. 10.
- 11. Register of licence holders.
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- 13. Powers of Police.
- 7. To whom licence shall be granted.

Annual subscription per annum is Rs. 10 now vide Finance Department Notification No. 21, dated 4th July 1927 published in Government Gazette dated 10th Sawan 1984

In Section 10 for the words "His Highness" the words "the Covernment" substituted by Act X of 1996 published in Government Gazette dated 15th Bhadon 1996. In Section 12 for the words "Member-in-Charge of the Press" the words "Govern-

ment" substituted and second Paragraph "Rules and Orders framed shall be submitted to the Council for Sanction'' deleted by Act X of 1996 published in Government Gazette dated 16th Bhadon 1996.

[Translated from original in Urdu jublished in Gevennment Gazette dated 1st Phugan 1946.]

THE RULES REGARDING USE OF FLOATING SKINS, 1946.

(Sanctioned by His Hickness the Maharaja Sahib Bahadur in Council vide Resclution No. 41 published in Government Gazette dured 1st Phayan 1946)

1. Whereas it is expedient to prescribe law for obtaining a licence for the use and possession of floating skins and Whereas it is necessary to prevent the use and possession of floating skins by persons addicted to theft and stealing of cattle, it is enacted as follows:-

2. A person intending to keep and make use of the floating skins shall submit an application in writing to the Tehsil-

dar of his place on a stamp paper of anna one.

3. The Tehsildar may on the recommendation of the Lambardar of the village or in the case of inhabitant of a town or city on that of two respectable inhabitants of the town or city, in which applicant resides, grant the licence to the applicant in the form prescribed in this behalf.

4. A person holding a licence under Section 3 shall be bound not to use a floating skin for the commitment of an

offence.

5. Any person found in possesssion of a floating skin without a licence after this law has come into force shall be liable to punishment of a fine which may extend to fifty rupees or with simple imprisonment which may extend to one month or with both. The floating skins found in his possession shall also be liable to forfeiture and sale to a person holding a licence in this behalf.

6. It shall be the duty of a Lambardar to collect all unclaimed floating skins within his circle and send them to the nearest police station. The floating skins received at the police station shall be kept there for a period of one month, and if no claimant appears during that term or claim put forward is not proved may be sent to the Tehsildar having juris-

diction in the Tehsil for sale by public auction.

A Lambardar guilty of an infringement of the rules shall

be punished with fine which may extend to ten rupees.

7. A licence to swim on skins shall be granted only to those persons who may reside near a river and may require it for bona fide purposes of agriculture, grazing of cattle or pertaining to office of shepherd or trade or for some other lawful object.

8. These rules shall be published for general informtion in every publication of the Government Gazette for two months before they come into operation. They shall be made known by a beat of drum within those towns, tehsils and thanas where the inhabitants are in the habit of keeping floating skins.

9. All persons residing in a village and all other persons who keep and use floating skins in a village shall be served with a notice through the Lambardar to obtain licences within

the prescribed period.

10. These rules shall not apply to persons authorised to make use of floating skins by the Government.

11. A Register of licence holders in the form appended

hereto, shall be kept at every tehsil.

12. Every licence shall be granted for a period of two years and a licence holder shall be at liberty to obtain renewal thereof in the prescribed manner at the end of that period.

13. The Police shall be bound to produce before a Magistrate any person who may be found to have infringed any of the Rules. Skins recovered from any such person shall also be produced.

FORM OF LICENCE.

| By this | licence- | | -sc | on of— | | |
|---------------|---------------|------------|------|---------|-----------|--------|
| caste | (Oc | cupation)- | _ | | | |
| | ——is I | | | | | |
| numbering— | ——for the | use of sy | wimi | ming ir | the— | |
| river at— | ——for the | purpose | of | agricul | ture or g | razing |
| of cattle or | pertaining to | office of | she | phard | or trade | or for |
| such other la | wful purposes | and to us | e th | e same | irom- | —to |

Signature of the Tehsildar.

Note.—The licence holder may, if he wants to get the licence renewed after expiry of the prescribed period apply in the prescribed form to the Tehsildar of the Tehsil concerned.

Form of Register regarding Licence Holders.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
|------------|--|-------------|------------|--|---------------------------|---------------------------------|--|--|--------------------------------|---------|
| Derial No. | Nume of licence bolder with purentage and caste. | Occupation. | Residence. | Number of floating skins (in figures and words). | Date of grant of licence. | Date of termination of licence. | Name of river or village or place where floating skins will be used. | Name of Lambardar or respect- able person or persons certifying character of licence-holder. | Objects for which licence obta | Rem rks |
| | | | | | | | | | | |

[Translated from original in Urdu published in Government Gazette dated 11th Har 1947 and Government Gazette dated 29th Maghar 1949.]

RULES REGARDING ARMS AND AMMUNITION 1946.

(Memorandum dated the 18th Phagan, 1946. Vide Resolution No. 11 contained in the Council Proceedings dated the 10th June, 1890, together with Circular No. 78 regarding the addition of Section 7 sanctioned by the Council, vide Resolution No. 24, dated the 24th December, 1892.)

1. No person except the subjects of the State residing within the State territory, shall manufacture, convert or sell or offer for sale, or keep any arms, ammunition, etc., except under a licence and in the manner and to the extent permitted thereby.

Nothing herein contained shall prevent any person from selling any arms or ammunition, etc., which he lawfully possesses for his own private use to any person who is not by any rules, for the time being in force, prohibited from possessing the same; and nothing shall render any person liable to punishment who, in compliance with an order of the Government or of such military officer who is empowered to make such order, manufactures or converts any arms or ammunition, etc.

2. The President of the State Council or such other officer whom the President authorises in this behalf, can grant such licences, and the licences shall be in the form appended.

Nothing herein contained shall prevent any subject of the State from selling arms, ammunition, etc., which he possesses for his own private use to any person who is a subject of the State, and such subjects may sell any arms or ammunition etc. to any inhabitants of a foreign territory. The restriction in respect of a licence for keeping arms, ammunition, etc., shall be considered to have reference to the inhabitants of a foreign territory.

- 3. All licences shall expire at the end of Chet of that year for which they are granted and shall be subject to those conditions which are endorsed thereon; but, before the expiry of the term of any licence, only that officer by whom the licence was granted, can renew the same.
- 4. The President of the Council or any other officer who is empowered to grant licence under these rules, may in his discretion, refuse to grant, or renew any licence or refuse permission for granting the same; but the officers who are authorised to proceed under these rules, shall discharge their duties subject to the control of the President of the Council.
- 5. Whoever, in violation of a condition subject to which licence has been granted, does or omits to do any act, shall be punished with simple or rigorous imprisonment for a term which may extend to six months or with both.
- 6. Whoever being a subject of foreign territory, purchases any arms or ammunition, etc., from any person not licensed or from any licence holder except under a licence and in the manner and to the extent permitted thereby, shall be punished with rigorous imprisonment for a term which may extend to six months or with both; and the magistrate trying the case, may, in addition to the above punishment, direct that the whole or a part of those arms or ammunition, etc., and utensils or carriage or transport animals used for transporting them, and any box, bundle or load in which such arms, ammunition, etc., are concealed, together with the contents of the box, bundle or load, be confiscated.
- 7. Whoever being a subject residing within the State territory, sells or offers for sale any arm or ammunition etc. to any inhabitant of a foreign territory who is not a licence holder, shall be liable to the same punishment which is prescribed for a purchaser in the foregoing section i. e. in Section 6.

FORM A.

Licence for manufacturing, converting or offering for sale or keeping arms and ammunitions etc.

| residence. | | DESCRIP | | | TION OF | of the | |
|------------------------------------|----------|--------------------------|----------------------------|--------------------------|----------------------------|---------------------------------|----------|
| holder with residence of business. | or Shop. | To be manufact- ured. | To be stocked and sold. | To be manufact- ured. | To be stocked and sold. | Date of expiry term of liceuce. | REMARKS. |

CONDITIONS.

A. The licence holder shall enter all the arms manufactured or converted and all ammunition etc. manufactured and all stores in stock and sold, in registers Nos. 1 and 2 or in such other registers which the Government may, from time to time, prescribe and shall keep account.

B. The licence holder shall show when so ordered his store and books of manufacture and sale to any magistrate or police officer not below the rank of the

Superintendent of Police.

C. The licence ho'der shall not sell arms, ammuntion etc. to any resident of a foreign territory.

FORM B. Licence for the sale of arms and ammuniton etc.

| Name etc of the licence holder with residence. | | DESC | RIPTION. | Date of | | | |
|---|-----------------------|-------|-----------------|---------------------------------------|---------|--|--|
| | Place of business. | Arms. | Ammunition etc. | expiry of the terms of licence. | REMARKS | | |
| | | | | | | | |

CONDITIONS.

A. The licence holder shall enter a statement of all the store in stock and of all the sale in Form No. 3 and 4 or in such forms which the Government may, from time to time, prescribe and shall keep the account.

B. The licence holder shall show, when so ordered, his store and books of sale to any magistrate or police officer not below the rank of the Superintendent

of Police.

C. The licence holder shall not sell arms ammunition etc. to any resident of a foreign territary except one who has obtained a licence under these rules.

FORM NO. I STOCK BOOK.

... father's name..... caste..... residence.....

| Date. | | | DESCRIPTION. | | | | | | f the | севое | |
|-------|---|------------|--------------|----------------------|-----------|----------|-------------|--------------------------|---|----------------------|----------|
| | Particulara | Fire-arms. | | Other kinds of arms. | | | to. | ress c ond o ch su | the l | | |
| | | Guns. | Pietols. | Swords. | Bayonets. | Daggers. | Other Arms. | Ammunition Etc. | Name and address of the shopkeeper and of the factory which supplied the articles received. | Signature of holder. | BENABKE. |
| | Stores in stock Manufac- tured Received | | | | | | | | | | |
| | Sold Stores in stock | | | | | | | | | | |

Form No 3 shall be like the Form No. 1 except that in the heading the words "licence for sale etc." instead of the words "licence for m.nufacture etc." shall be entered, and the word "manufactured" shall be deleted from column (2).

FORM NO. 2.

Daily sale bookfather's name.......caste

The person to whom licence for manufacturing, converting or selling the arms and ammunition etc. has been granted.

| Date. | Name of purchaser together with father's name. | Onste and occupation of the purchaser. | Place of residence of the purchaser. | Articles purchased. | Price. | Signature of the purchmeer and the shopkeeper. |
|-------|--|--|---|---------------------|--------|--|
| - 97 | el su' | | | | | |

Form No. 4 shall be in accordance with Form No. 2 except that the words "licence for sale etc." instead of the words "licence for manufacture, convertion etc." shall be entered in the beading.

Proceedings of a Meeting of the Jonnu and Kashmir State Council held at Srinagar on Friday the 12th August 1898 at 12 noon.

READ Assistant Resident's letter No. 2948, dated 21st June 1898, stating that the Government of India deem it desirable that full control should be exercised by the Durbar over the possession and sale, by their subjects, of Fire-arm and Ammunition in Jammu and Kashmir, with a view to prevent the possibility of weapons reaching countries beyond the limits of the territories of His Highness; through the medium of traders or otherwise and that, therefore, it has been proposed:—

(1) That the sale or gift of Rifles or Ammunition by European visitors direct to His Highness' subjects or other Natives of India in Jammu and Kashmir, and its dependencies be prohibited, except with the sanction of the Resident in

Kashmir.

(2) That, sales of Arms and Ammunition in Kashmir be made only through shops, agencies or persons properly licensed in Srinagar.

(3) That, sales and purchases in the case of Arms and Ammunition manufactured beyond the limits of Jammu and Kashmir, should only be made in Srinagar, through the agen-

cies or persons above referred to.

The foregoing rules, the Resident observes, will prevent any gift or sale of Rifles by European visitors in Kashmir to any of His Highness' subjects, except with his previous knowledge. It is, however, equally desirable that a parallel check should be placed on the sale and possession of Arms by His Highness' subjects also. It would, therefore, seem desirable that a registration system should be introduced for all State subjects excepting, perhaps, those not less in rank than Tehsildar. The Resident, therefore, suggests following additional rules also for the consideration of the Durbar:-

(I) That an annual stamped licence on Kashmir eight annas stamped paper be issuable for the possession of every private gun or rifle by all subjects of His Highness below

the rank of Tehsildar.

(2) That Provincial Governors be instructed to complete lists of all Fire-arms of every kind, owned by all persons not under the rank of Tehsildar within the limits of their charges.

(3) That these lists be checked periodically by the Governors and that reports be submitted half yearly by them to

the Vice-President showing that this has been done.

(4) That the licence papers be issued by the Provincial Governors who should have authority to refuse licence to any persons whom they may consider not fit to possess them.

These rules would not apply to the Imperial Service or Regular Troops, or State Police, or to the house-hold of His Highness the Maharaja, or Raja Sir Ram Singh K.C.B., and Raja Sir Amar Singh, K.C.S.I., or such persons as the Durbar, with the consent of the Resident, might wish to exempt under order from the operation of the rules.

That the same rule should mutatis mutandis be made applicable to Poonch where the registers will be kept up under the orders of Raja Baldev Singh who will submit them half-yearly to the Vice-President for information, the income from the

system being creditable to Poonch Revenues.

That in the Jagirs of Raja Sir Ram Singh Sahib K.C.B., and Raja Sir Amar Singh Sahib, K. C. S. I., the rules applicable to Poonch might usefully be adopted, the list of Arms and Returns of Licence holders coming to the Vice-President.

But that in the case of the smaller Jagirs the controlling authority might well be vested in the State under the Provin-

cial Governors.

'That any infringement of the rules should render the offender liable to a punishment not exceeding a term of imprisonment for six months or a fine not exceeding Rs. 1,000 or both, and that the cases might be triable by the Raja Sahibs named and the Provincial Governors for the places subject to their jurisdiction.

The Resident requests that the matter may receive early consideration of His Highness the Maharaja and the State

Council.

Laid before the Council by the Vioe-President under His Highness' orders No. 1514, dated 1st July 1898.

RESOLVED unanimously on 10th August 1898:—
(1) That the Darbar approve of the proposed rules in their entirety.

(2) That in the opinion of the Darbar it would fully answer the purposes intended by the Imperial Government, if instead extending the rules to the whole State their operation was restricted to Kashmir Province including Gilgit, Ladakh and Skardu.

(3) That the view expressed above receives material support from the fact that the entire population of Jammu Province is composed of martial races who are generally possessed of Arms and it would be extremely inconvenient to issue licences to all of them without any corresponding advantage.

(Published in Government Gazette dated 14th Basiakh 1972, with corrigendum in Government Gazette dated 18th Magh 1972.

¹ For amendment see order, dated 13th March, 1934 infra,

[Translated from original in Urdu published in Government Gazette dated 10th Katik 1985.]

NOTIFICATION No. 29.

9th Assuj 1985.

Regarding hearing of appeals by the Revenue Minister against the orders of Governor Kashmir passed under the provisions of Arms Rules.

As proposed by Foreign and Political Minister and recommmended by the Cabinet, His Highness has been pleased to sanction (vide Cabinet Secretary's endorsement No. 3227, dated 23rd September, 1928) that appeals against the orders of Governor Kashmir passed under the provisions of Arms Rules shall in furture be heard by the Revenue Minister.

This Notification is published for general information.

(Sd.)

REVENUE MINISTER,

Jammu and Kashmir Government.

OFFICE OF THE MINISTER FOR REVENUE AND AGRICULTURE.

26th March 1931

No. 56. In pursuance of the orders of the Cabinet, received under Cabinet Secretary's endorsement No. 833, dated the 21st November 1930, all Gazetted Officers are hereby exempted from taking out licences for possession of firearms including revolvers and pistols.

(Sd.) R. DUBE,

MINISTER FOR REVENUE AND AGRICULTURE.

(Published in Government Gazette dated 20th Chet 1987.)

NOTIFICATION.

Dated Jammu, the 15th December 1933/1st Poh 1990.

- No. 11-L of 1990. Rules to regulate the importation of arms into the State under a British Indian Licence for the possession and carrying of arms, sanctioned by His Highness the Maharaja Bahadur (vide Hon'ble Prime Minister's No. PB-1173, dated 13th December 1933).
- 1. All persons in possession of a British Indian Licence and importing arms into the State will be required to pay a fee of Re. I for a smooth bore gun,

Rs. 2 for a rifle and

Rs. 3 for a pistol or revolver,

with effect from 1st March 1934 at the first customs post

of entry into the State.

2. Licences of arms brought in by travellers for their own use (either brought in by themselves or sent ahead or following them within a reasonable period, to be determined on the merits of each case) will be inspected by the officerin-charge Customs at the first post of entry into the State, and any firearms not covered by licence produced by the owner or servant duly authorised in this behalf will be detained at the customs post.

3. The officer-in-charge of the customs post will give in each case a receipt to the owner describing the particulars of the weapon detained by him and shall report the facts to the Government for orders. On the receipt of Government orders the weapon shall be delivered to the owner or shall be deposited at such other place as the Government may direct in this behalf. It shall always be open to the owner to produce a licence and take delivery of the weapon on payment of

the fee chargeable thereunder.

4. To facilitate the description of a weapon and its identification the manufacturer's marks which are easily identifiable may be noted and in case there are no such marks the system of stamping the arm with serial number of register containing the full description may be adopted.

5. The power of detaining arms conferred by Rule 3 shall be discretionary, and the fact of detention shall immediately be reported to the Inspector General of Police with full details, and to the Director of Visitors Bureau in the Prov-

ince of Kashmir.

6. Arms detained under Rule 3 and not claimed by any one for a period of 6 months shall be forfeited to His Highness' Government and may be disposed of as follows:-

(a) Arms and ammunition which can be utilized by any

department of the Government may be retained and brought into use, with the sanction of the Government by that department. Arms and ammunitions not so retained may be sold to licensed dealers or other persons entitled to possess them.

(b) Any arms and ammunition so disposed of may be

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broken up locally and the materials sold.

7. At each customs post of entry into the State there shall be kept a register in the following duplicate form:—

LICENCE FOR THE POSSESSION AND IMPORTATION OF ARMS UNDER THE BRITISH INDIAN LICENCE.

| 1 | 2 | 3 | 4 | | 5 | | 6 | 7 | 8 | 9 | 10 |
|---|--|----------------|-------------------------------|--------------|------------------|---------|-----------------------------|----------------------------------|--|---------------------------|----------|
| | Name, description and residence of licensee or agent (if any). | Number of arms | Description, including manks. | Description. | Weight in seere. | Number. | Purpose for which required. | Value of the firearms per piece. | Period for which the linen is valid from to 19 . | Amount of the fee levied. | REMARKS. |
| | | | | | | | | | | | |

8. The duplicate forms shall be duly filled in signed and sealed by the official in charge of the post and a copy of it will be delivered to the owner.

9. The entries in the Register shall be legibly written.

10. The licences thus granted shall be valid for a period of one year unless the Government otherwise directs in this behalf and may be renewed by the authority granting it after the expiry of the period specified in the licence.

11. If two or more people hold a joint licence in respect of the same weapons each must be charged the fee specified

in Rule 1.

12. On the form of the licence described in Rule 7 shall be printed the following conditions:—

(a) This licence is granted subject to the provisions of

the "Kashmir Visitors Rules" in force in the State.

(b) The licensee shall not use any arms covered by this licence otherwise than in good faith for the destruction of wild animals.

(c) He shall not lend any arms or ammunition covered by this license to any person other than a member of his fami-

ly, or servant who may be employed by him.

(d) He shall forthwith give information at the nearest Police Station of the loss, or theft of any arms and ammuni-

tion covered by this licence.

- (e) This licence shall be void if the licensee commits a breach of any of the conditions or if the licensee dies or if any weapon covered thereby is sold or is attached in execution of a decree.
- (f) A competent authority appointed in this behalf by His Highness the Maharaja Bahadur has the right to enquire at any time during the currency of the licence whether any weapon for which it has been granted is still in possession of the licensee and to require production of the same for the purpose of such enquiry.

13. No licence will be necessary for persons exempt under the provisions of the Indian Army Act and under rules applicable to British India from the operation of the Arms Act of British India. But soldiers not serving with the colours and employed under a civil department shall not be exempt.

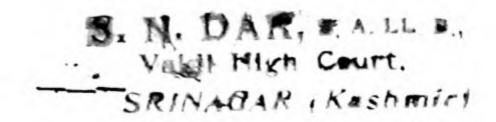
14. His Highness the Maharaja Bahadur may from time to time by a Notification published in the Government Gazette exempt any person or any class of persons or exclude any description of any arms or ammunition from the operation of any prohibition or direction contained in these rules.

By command of His Highness the Maharja Bahadur,

(Sd.) BARJOR DALAL,

JUDICIAL MINISTER.

[Published in Government Gazetted dated 28th Poh 1990.]



OFFICE OF THE JUDICIAL MINISTER.

ORDER.

13th March 1934.

As it is expedient that infringement of rules relating to firearms and ammunition in Kashmir Province should be punished by Magistrates like any other criminal offence, His Highness the Maharaja Bahadur is pleased to command that State Council Resolution of 12th August 1898 shall be amended and in future infringement of the rules mentioned above shall be punishable by a Magistrate having jurisdiction.

By command of His Highness the Maharaja Badadur.

(Sd.) BARJOR DALAL,

JUDICIAL MINISTER.

[Published in Government Gazette dated 2nd Chet 1990.]

[Translated from original in Urdu published in the Judicial Circular Vol. I. P. 12.]

SURVEILLANCE OF BAD CHARACTERS.

Notification No. 13.

Dated 28th Katik 1949.

(Sanctioed by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 29 dated 2nd January 1892.)

Every person whose name is entered in Register No. 10 pertaining to bad characters shall obtain a permit ticket from the Police Station concerned when he intends to go to some other place from his place of residence and where ever he sleeps for the night he shall report to the Officer-in-charge of the Police Station of that Ilaqa or in his absence to the lambardar or chowkidar that he is bad character of such name and description and on that ticket shall get the attestation of the Officer-in-charge of the Police Station or signature of the lambardar or chowkidar as the case may be. On his return he shall get it attested that he stayed there for so many days. On his return to his residence he shall produce that ticket in the Police Station concerned wherefrom it was issued.

Whosoever infringes the aforesaid Rule shall be liable to punishment for offence under 'Section 143 Ranbir Dand

bidhi (disobeying order duly promulgated.)

As to the circumstances under which name of a person shall be entered in Register No. 10, separate detailed Rules will be issued by the General Department for guidance.

[Translated from original in Urdu published in Government Gazette dated 6th Jeth 1954.]

SURVEILLANCE OF BAD CHARACTERS.

Register No. 10 and Register No. 9.

CIRCULAR.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide Resolution No 3 contained in the State Council proceedings dated 17th April 1897.)

It has been ordered (vide Notification No. 13 sanctioned by State Council Resolution No. 29 dated 2nd January 1892) that culprits entered in Register No. 10 are liable to punishment under 'Section 143 in case of infringement of provisions of the said Notification. No Rules, however, have been issued to determine circumstances under which name of a person should be entered in Register No. 10. The following Rules are, therefore, issued and in accordance with these rules the Superintendents of Police will enter the names of bad characters in Register No. 10. The appeal against the order of the Superintendent of Police shall lie to the Sessions Judge. The Police in accordance with these Rules is also competent to enter the names of bad characters No. 9. It will be sufficient that in Register No. 9 names of those persons are entered who have been convicted and sentenced of cognizable offences excepting offences under special or local laws as is provided in the rules.

- A person shall not be entered in Register No. 10 unless one or more of the following facts are satisfactorily proved against him:—
 - (a) that he is in the habit of committing cognizable offences.
 - (b) that there is apprehension of commission of offences on his part as there is no check on his movements

Section 188 Ranbir Pennal Code. see Notifiction No. 124 infra.

and as his name is not entered in Register No. 10 and he is not subjected to surveillance.

(c) that he has no ostensable means of subsistance and is released on security for good behaviour.

Explanatoin.—A person who is proved to have been previously convicted thrice of cognizable offences shall be

understood to be taken as "habitual offender."

2. When the Superintendent of Police on his own accord or on the report of any officer subordinate to him, may deem it proper to enter the name of a person (coming under the purview of Rule I) in Register No. 10, he will hear the objections of that person and after fully satisfying himself will order that his name shall be entered in Register No. 10 subject to any condition which may be considered proper to impose.

3. In order to comply with an order made under Rule 2 a Register in accordance with the form already in vogue shall be kept and maintained and it will be known as Surveillance Register or Register No. 10 and in it the names of all persons as provided in the above rules shall be entered. This

Register shall not be destroyed.

4. On title page of the Register a list of villages and towns situated within the jurisdiction of the Police Station alphabetically arranged with serial number, will be given on the left side and reference to the pages of the register opposite each entry on the right side will be given.

5. For each village and town so arranged alphabetically as many pages will be allotted as are considered proper.

6. At the end of the Register sufficient number of pages will be left apart to enter the names and descriptions of such persons whose residence is not known but frequently visit the illaqa of that Police Station.

7. Name and description of each culprit shall be entered as far as possible on pages allotted to that village or town

wherein he ordinarily resides or which he frequents.

8. This Surveillance Register will be kept as a confidential document of the Police Department and its contents will not be disclosed except to proper officers of the Department, District Magistrate or higher officers, in ordinary course of business.

9. Police surveillance shall comprise such close watch over the movements of the person under surveillance, by Police Officers village headman and village watchman, as may

be practicable without any illegal interference.

10. The Sessions Judge, Superintendent of Police or any other Officer empowered by the Government in this behalf, shall examine such entries in the Register from time to time. They shall have power to remove the names of persons

from the Register on account of good behaviour or for some other reasons. In case such officer is other than the Superintendent of Police, he shall inform the Superintendent of Police of such removal of names. A bad character may apply to the Superintendent of Police for the removal of his name from the Register on the ground that entries of good behaviour have been made in his favour and the Superintendent of Police may, after making enquiry, pass proper orders on such application. 'Appeal from such order also shall lie to the Sessions Judge.

ENTRIES IN REGISTER No. 9 BY SUPERINTENDENT OF POLICE.

11. Irrespective of the fact whether a person is entered in Register No. 10 or not, a Register will be maintained in the office of the Superintendent of Police of each Province in the Form already prevalent, for entering the names of persons who are convicted of any of the cognizable offences.

12. Entries in this Register will be made in accordance

with the report of subordinate officers in case-

(a) order is not appealable, immediately on receipt of the report.

(b) order is appealable but no appeal is filed, after

expiry of period of limitation of appeal.

(c) appeal is filed, on receipt of report that appeal is

rejected and sentence is maintained.

13. It will be the duty of every Court Inspector or Assistant Court Inspector, or any official appointed to conduct cases that he should report immediately to the Superintendent of Police about the decision of cases referred to in the aforesaid Rule for making entries in the Register.

REGISTER BOOK OF POLICE STATION.

- 14. In every Police Station a Register known as Conviction Register according to the prescribed form will be kept and maintained in which names of all those persons shall be entered who have been convicted of cognizable offences and who reside within the jurisdiction of that Police Station or visit that Ilaqa and in this Register all proved crimes shall also be recorded.
- 15. All the provisions of Rules 4 to 7 of this Circular with respect to Register No. 10 will apply to Register No. 9 i.e. Police Station Register just as those are applicable to Register No. 10.

¹dee Notification No. 124 infr ..

16. In accordance with the aforesaid provisions entries shall be made by the Officer-in-charge of the Police Station

personally or under his supervision by a subordinate.

17. After making the entries in the aforesaid Register it shall be the duty of the Officer-in-charge of the Police Station to produce it at the time of inspection before the Superintendent of Police who will sign the entries after ascertaining and checking, if these have been made from information received through proper sources such as report from Police Station or Judicial Department etc. The officer making the entry shall keep the papers (according to which entries were made in the Register) with due care and in such manner that in case of inspection and checking corresponding papers may easily be traced out.

18. Entries in the Register shall not be disclosed at all to persons whose names have been entered in the said Register or to persons to whom such disclosure is not necessary

as part of legitimate duty.

19. The Register will not be open to inspection merely as a record to help in the preparation of a challan or as a record of previous conviction. A person entered in the Register shall not be subjected to surveillance so long as his name is not entered in Register No. 10 according to aforesaid Rules. Any employee of the Police Department who keeps a watch on a person whose name is not entered as a matter of fact, in Register No. 10, shall be suspended.

20. The Superintendent of Police, from time to time, will make necessary correction by removing the names of per-

sons who died or gave up their residence in that Ilaqa.

[Translated from original in Urdu published in Government Gazette dated 17th Phagan 1972.]

JUDICIAL DEPARTMENT.

Notification No. 124.

His Highness the Maharaja Sahib Bahadur has been pleased to order (vide Chief Minister's letter No. 7356/F-269-09, dated 10th February 1916) that in future appeals against the orders by which names of bad characters are entered in Police Register No. 10 will be heard by the Governors instead of Sessions Judges and in this respect sanction of the Resident has also been received (vide letter No. 7112/269-F-09, dated

31st January 1916). Accordingly Resolution No. 1 dated 17th April 1897 will be considered as amended.

This Notification is published in the Gazette for general

information.

[Translated from orginal in Urdu published in Judicial Circular Vol. I Page 110.]

LAW OF INHERITANCE PERTAINING TO APOSTATE.

CIRCULAR NO. 107.

[Sanctioned under Resolution No. 6 dated 31st December 1892 and entered in the Proceedings of the State Council.]

Read a report of the Wazir Wazarat Anantnag to the effect that a Pandit resident of Pariwan has along with his wife and children embraced Islam and his mother has applied that her son the new convert should be turned out of her house as under the orders of His Highness the Maharaja Bahadur any person abjuring the religion of his fore-fathers is deprived of succeeding to the property of his father.

RESOLVED by the Council that action may be taken ac-

cording to law and ancient usage.

This resolution is published in the form of a circular for the information of the public.

(Sd.) RAI BAHADUR PT. BHAG RAM,

Judical Member & Secretary State Council.

THE JUDICIAL OATHS RULES, 1950.

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Translated from original in Urdu published in Government Gazette dated 1st Chet 1950.

THE JUDICIAL OATHS RULES, 1950.

CIRCULAR NO. 34.

[Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide Resolution No. 28 contained in the Council Proceedings dated the 13th January 1894.]

Whereas it is expedient to frame rules relating to Judicial Oaths, affirmations and declarations, it is hereby commanded as follows:—

I.—PRELIMINARY.

- 1. These rules shall come into force from the date of the sanction of the Council.
- 2. Nothing herein contained shall apply to the proceedings before Courts martial.

II .- AUTHORITY TO ADMINISTER OATHS AND AFFIRMATIONS.

3. All Courts and persons having by law or consent of parties, authority to receive evidence, are authorised to administer by themselves or by an officer empowered by them

in this behalf oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred on them respectively by law.

III.—PERSONS BY WHOM OATHS AND AFFIRMATIONS MUST BE MADE.

4. Oaths or affirmations shall be made by the following

persons:-

(a) All witnesses, that is to say all persons who may lawfully be examined or give or be required to give, evidence by or before any Court or person having, by law or consent of parties, authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given

by witnesses and

(c) jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Note-The evidence of a witness below the age of 10, if expediently taken

without an oath of affirmation, is admissible.

or Mohammedan, or has an objection to making an oath, he shall, instead of making an oath, make an affirmation. In every other case, the witness, interpreter or juror, shall make an oath.

IV-FORMS OF OATHS AND AFFIRMATIONS.

6. All oaths and affirmations made under Rule 4 shall be administered according to the following forms, but the Court may, if it thinks fit, place, at the time of administering oath, the holy book which he considers binding on him in the hands of the witness or the interpreter, and tender an oath according to the forms given below:—

Civil.

Whatever evidence I give in this case and before the Court shall be true. I shall state nothing but truth. So help me God.

'Rule 5 Substitutioned by Regulation IV of 1977, Schedule I published in Government Gazetted dated 16th Chet 1977, I do solemnly affirm that the evidence I shall give in this case before the Court, shall be the truth, the whole truth and nothing but truth.

So help me God.

I shall translate correctly and accurately whatever stateouth for the Translator. ment is made by the witness before the

Court. So help me God.

I do solemnly affirm that I shall translate correctly and accurately whatever statement is made by witness before the Court.

Criminal.

FOR THE WITNESS IN CASES TRIABLE BY THE JURORS.

The evidence I shall give before the Court and the jurymen relating to matters to be decided between the Government Servants and the
prisoners present in the Court, shall be the truth and nothing
but the truth. So help me God.

I do solemnly affirm that the evidence I shall give before the Court and the jurymen relating to the matters to be decided between the Government Servants and prisoner present in the Court, shall be the truth, the whole truth and nothing but the truth.

IN OTHER CRIMINAL CASES.

The evidence I shall give in this case shall be the truth, the whole truth and nothing but the truth. So help me God.

I do solemnly affirm that the evidence I shall give in the Court, shall be the truth, the whole truth and nothing but the truth.

I shall translate correctly and truly whatever is stated by the witness as between the Government Servants and the prisoner present in the Court.

FOR THE JURYMEN.

I take oath. I shall judge truly and give true opinion and verdict in the case according to the evidence before me.

I solemnly affirm in the presence of Almighty God, that
I will judge truly between the Government Servants and prisoner in the Court
and will give a true verdict according to

the evidence.

- 7. If any party to, or witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by persons of the race or persuation to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, not withstanding anything hereinbefore contained in this Circular, tender such oath or affirmation to him.
- 8. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in Rule 7, if such oath or affirmation is made by the other party to or by any witness in such proceeding, the court may, if it thinks fit, ask such party or witness or cause him to be asked, whether or not he will make the oath or affirmation.

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering

such question.

- 9. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a Commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed, and return it to the Court.
- 10. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.
- 11. If the party or witness refuses to make the oath or solemn affirmation referred to in Rule 7, he shall be punished with a fine, but the Court shall record, as part of the proceeding, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—MISCELLANEOUS.

12. No omission to take any oath or make any affirmattion, no substitution of any one or any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding, or render inadmissible any evidence whatever in or in respect of which such

omission, substitution or irregularity took place or shall affect

the obligation of a witness to state the truth.

13. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.

14. 'Ranbir Dand Bidhi Section 137, Sub-section (1) shall be construed as if, after the word "oath" the words "or

affirmation" were inserted.

15. Subject to the provisions of Rule 4, every person appointed to any office shall, before entering on the execution of the duties of his office, be required to make an oath, or to make or subscribe any affirmation or declaration whatever.

[Translated from original in Urdu published in Government Gazette dated 4th Assuj 1950.]

PROHIBITION OF HYPOTHECATION OF A HUMAN BEING IN LIEU OF A DEBT.

ISHTIHAR No. 112.

(State Council Resolution No. 34, dated 16th August 1893.)

It has been noticed that in some parts of the Jammu Province practice is prevalent that a human being is hypothecated in lieu of a debt. Whereas it is essential to stop absolutely for future this practice against public policy His Highness the Maharaja Sahib has been pleased to order (vide No. 62/2655 dated 19th Magh, 1949) that whoever in future keeps a human being in hypothecation for securing the payment of his debt will be liable to punishment under ²Section 143 Ranbir Dand Bidhi, (disobedience to order duly promulgated). Such contract of hypothecation will be considered as void and creditor will not be entitled to realize debt through a Law Court.

Contracts entered into before the promulgation of this Ishtihar will be treated as cancelled so far as condition of hypothecation of a human being is concerned. There will however be no restriction as to institution of a suit for recovery of money advanced.

¹Section 178 Ranbir Penal Code. ²Section 188 Ranbir Penal Code.

[Translated from original in Urdu published in Judicial Circulars Vol. I. Page 361.]

PROHIBITION OF REMOVAL OF BOVINE ANIMALS BEYOND STATE TERRITORIES.

¹Notification No. 119.

8th Maghar 1950.

According to the Irshad of late Shri Maharaja Sahib Bahadur of revered memory dated 18th Maghar, 1939 (attached with the report of the High Court) taking of bovine animals beyond the State territories is prohibited. In a case a reference has been made to His Highness the Maharaja Sahib Bahdur praying elucidation on the point if it is an offence or not to take bovine animals beyond the State territories by the residents of the adjoining villages of the British territories for ploughing purposes. His Highness the Maharaja Sahib Bahadur is pleased to order (vide order dated 14th Katik, 1950) that the Irshad of His Highness the Maharaja Sahib Bahadur dated 18th Maghar, 1939 is clear and explicit and according to it compliance shall be made. In accordance with the aforesaid Irshad, therefore, this Notification is published for general information that no person shall take bovine animals beyond the State territories for any purpose whatsoever. Any infringement of this Notification which has the force of law will be punished as an offence as laid down in ²Section 143, Ranbir Dand Bidhi.

[Translated from original in Urdu published in Judicial Circulars Vol. III. Page 8.]

ISHTIHAR No. 218.

(Sanctioned vide State Council Resolution No. 30, dated 20th March, 1896.)

In spite of promulgation of Ishtihar prohibiting export of bovine animals to foreign territories, i.e. territories outside the State, many persons have not refrained from such acts and complaints have been made that such offences are still being committed. Therefore, with a view to check the com-

¹¹n 1970 System of permits was introduced. See infra,
2 Section 188 Ranbir Penal Code.

mission of such offences, it is hereby notified that an informant who will get the accused arrested along with bovine animals while taking them outside the State boundries will get a reward out of the fine imposed upon the accused for such an offence in case such information is proved to be true. It is incumbent upon the Court to grant reward out of the fine inflicted in such cases to persons who arrest or get arrested the accused along with the animals while the latter are being taken outside the State boundaries.

4тн Јетн, 1953.

RULES RELATING TO EXPORTATION OF BOVINE ANIMALS, 1970.

territories of His Highness the Maharaja

Certificate of Import

Bahadur except those laden with goods
or yoked to conveyances or otherwise for
trade purposes shall be taken direct to the nearest frontier Customs Post and a certificate of import in form A obtained from

the official in charge of that Post.

of import obtained according to rule I above shall be handed over at the post of export and the re-exportation shall thereupon be allowed provided that the number tallies with the number imported except as provided in rule 3 below and the export takes place within three months of the date of import. Provided further that the export of such calves also shall be allowed as may be proved to have been born of the cows within the State after their importation.

3. If all the bovine animals entered in a certificate of import are not re-exported at one and the same time and some are left for being re-exported subsequently, the Mahaldar at the post of re-export shall note this fact in the remarks column of the certificate of import and shall then return it to the owner or carrier for being produced with the remaining number, when it is exported and the re-exportation shall be allowed according to the provisions of rule 2 above.

4. When any bovine animal not imported in the State during the preceding 3 months and accompanied by a certificate of import is intended to be exported temporarily for trade, agricultural or grazing purposes the owner or carrier export-

ing it shall file a declaration in the form marked B, duly attested and verified by the Lambardar or the Patwari of the village of export and shall thereupon be allowed to export.

Note.—Printed forms of declaration will be supplied free by any frontier Customs post on application. Bona fide owners of bovine animals when transferring their residence shall be allowed to take their animals along with them as well as those given as gifts on occasions of marriage.

on furnishing a declaration according

Register of fresh exportation to rule 4 shall be maintained at the post of export in Form C, and the signature or thumb mark of the exporter obtained on both export and import in the columns provided for the purpose. The exporter should be given a duplicate copy of this declaration signed by the Mahaldar of the post. Marks of identification of animals should be noted in the registers of imports and exports as well as in the declaration for export.

by which they were exported the duplicate cate copy of the declaration granted at the post of exportation shall be produced and the Mahaldar concerned should endorse it with an acknowledgment of re-importation and forward the same immediately to the Mahaldar of the post of export and the latter shall note

the fact in remarks column of the register.

7. If any zamindar or other person has to take out his animals very frequently for trade, agricultural or grazing purposes to the adjoining British territory he shall furnish a duly attested declaration in form D, to the nearest Customs post and he shall thereupon be granted a permanent pass in Form E.

Note.—Printed forms of declaration will be supplied free on demand.

An annual register in Form F, shall also be regularly maintained at the post of issue of the permanent pass.

Additions and deficien or alterations that are made during the course of the year and any deficiencies that are occasioned by natural death, etc. shall proofs to corroborate good faith in the case of deficiencies and the Mahaldar shall, provided that he has no reason to the Register.

9, All certificates and passes granted under these rules and the animals for which they are given Check and verification shall be produced for check and verification at any time on demand by any officer of

the—

(a) Customs and Excise Department not below the rank of an Assistant Inspector,

(b) Revenue Department not below the rank of Naib-

Tehsildar.

10. Whoever, Offences and punishments.

> (a) exports animals except under a certificate of import or a pass or without furnishing a duly attested declaration,

(b) furnishes or attests a false declaration,

(c) does not re-import animals within the prescribed period,

(d) cannot satisfactorily account for any bovine animals which he is known to have possessed,

(e) refuses to produce passes and animals for inspec-

tion, or

(f) otherwise commits an infraction of these rules or the certificates and passes issued thereunder or of any other rules for the time being in force in regard to the exportation of bovine animals,

(g) abets in the commission of any offence or infrac-

tion,

he shall be liable to punishment under 'Section 143 of Ranbir Dand Bidhi.

- 11. The Mahaldar of the post of export shall send immediate report to the Inspector of Customs Report of offences and Excise if any bovine animal is not imported within the promised period which shall in no case exceed 3 months.
 - A. CERTIFICATE OF IMPORT OF BOVINE ANIMALS.

Month and date. Name and address of carrier or owner.

Details of Animals:

Cows.

Oxen.

| RULES RELATING TO EXPORTATION OF BOVINE ANIMALS, 1970. 31 |
|--|
| Calves. |
| Total. |
| Purpose for which imported. |
| Remarks. |
| Signature of Mahaldar of the post of Import with the name of post. |
| Date of re-exportation. |
| Remarks. |
| Signature of Mahaldar of the post of Export with the name of post. |
| B. Declaration of Exportation. |
| ed below are being exported temporarily for the purpose of |
| Details:— |
| Cows. |
| Oxen. |
| Calves. |
| Total. |
| Signature. |
| Date. |
| I attest the above. |
| Lambardar Patwari. |
| Signature. |

Date.

| 32 | RULES RELATING TO EXPORTATION OF BOVINE ANIMAIS, 1970. |
|----------------------------|--|
| | C. REGISTER OF TEMPORARY EXPORTS. |
| | Serial No, |
| | Month and date. |
| | Name and address of exporter. |
| Deta | ails of animals exported:— Cows. |
| | Oxen. |
| | Calves. |
| | Total. |
| | Purpose of exportation. |
| | Period within which re-importation is promised. |
| | Signature of Exporter. |
| | DATE OF RE-IMPORTATION. |
| | Signature of Importer. |
| | Remarks. |
| Ι | DECLARATION OF FREQUENT EXPORTATION AND IMPORTATION. |
| the and low liabl | Tehsil———————————————————————————————————— |

Details:—

Cows.

| | Marks of identification. | |
|----|---|------------|
| | Oxen. | |
| | Marks of identification. | |
| | Calves. | |
| | Marks of identification. | |
| | Total. | Signature. |
| | Date. | |
| | I attest the above. | |
| | | Lambardar |
| | Date. | Patwari. |
| | E. PERMANENT PASS. | |
| | No. of Register. | |
| | Month and date. | |
| | Name and address of grantee. | |
| | Purpose of frequent exportation and imp | ortation. |
| De | tails:— | |
| | Cows. | |
| | Marks of identification. | |
| | Oxen. | |
| | Marks of identification. | |
| | Calves. | |
| | Marks of identification. | |

Total.

34 RULES RELATING TO EXPORTATION OF BOVINE ANIMALS, 1970. Changes during the year. Remarks. Signature of Mahaldar. of issue.

In duplicate—one for grantee and the 2nd for office

REGISTER OF FREQUENT IMPORTATION AND EXPORTATION FOR THE YEAR 19 .

Serial No.

Month and date.

Name and address of grantee.

Purpose.

Details:—

Cows.

Marks of identification.

Oxen.

Marks of identification.

Calves.

Marks of identification.

Total.

Changes during the year.

Month and date.

Nature of change.

Cows.

Marks of identification.

Oxen.

Marks of identification.

Calves

Marks of identification.

Remarks.

Note :- A full page shall be allotted to each number.

[Translated from original in Urdu published in Government Gazette dated 15th Chet 1950.]

CIRCULAR No. 136.

27th January 1894.

(Sanctioned under State Council Resolution No. 25, dated 27th January, 1894).

On a reference by the Saddar Court Jammu to the effect that when a tenant after locking the house goes away without any notice to the owner, and the latter applies for the house being unlocked or for its possession, in which Court such an application will lie, held by the State Council (vide Resolution No. 35) that such an application shall lie in a Judicial Court and the Court to which such an application is presented is empowered to give possession (of the house) to the owner and after preparing the list of articles according to rules shall keep them in trust till the return of the tenant. It is therefore proper that all subordinate courts should hear such applications and pass proper orders with respect to articles found within the house and give possession of the house to the owner in conformity with the provisions of this circular and circular No. 16 dated 15th June 1889.

^{*}Note.—The court referred to in this circular shall mean the court in which the suit for possession of the property in question would lie.

^{*} Note was added vide Regulation IV of 1977 published in Government Gazette dated

[Published in Urdu in Government Gazette dated 29th Jeth 1952.]

POST OFFICE AND SAVINGS BANKS ACTS APPLICABLE

NOTIFICATION, 1952.

READ the Resident's letter No. 156, dated the 16th March, 1895, regarding the enforcement of the India Post Office Act

of 1866 and the Savings Banks Act of 1873.

(I) Either of the two proposals embodied in paragraph 2 of the Director General's letter may be accepted. On account of the enforcement of the enactments (referred to above) and of the rules made thereunder, either an Act or an Ain on their lines may be introduced in the State, or the courts of the State may be directed that in cases relating to the Post Offices, they should follow the said Act and the rules made thereunder.

(2) With regard to the jurisdiction of the courts in cases relating to the Post Offices, the Resident is of opinion that general rules contained in paragraph 4, clauses (a) and (b) of Resident Colonel Prideaux's letter No. 1098, dated the 27th April 1891, should be deemed to be applicable, that is the cases of the European and American subjects should be tried by the Resident and the cases of other persons who are the subjects of the State or native Indian subjects should be tried in the courts of the State: Provided that those native Indian subjects whom punishment is awarded under the Post Offices Act or Savings Banks Act, by the Courts of the State, should have a right to make an application to the Resident.

The Council under Resolution No. 5, dated the 30th

March, 1895, orders as under:-

The Post Office Act and the Savings Bank, Act may be deemed to be applicable to the State. All cases tried under these Acts may be tried subject to the conditions laid down in the 'letter of the Resident, Colonel Prideaux. The Council notifies for the information of the public whether inhabitants of the towns or of the villages within the Jammu and Kashmir State and Jagirs of Poonch, Ramnagar and Bhadarwah, that the Imperial Post Offices shall have an exclusive and absolute authority of transmitting and distributing postal letters and cards.

^{&#}x27;Arrangement indicated in Para 4 of Colonel Pride.ux's letter were Superceeded vide Letter No. D 3.256/30, dated 6th June, 1930 from Lieutenant Colonel G. O. Oglivie C. I. E. Resident in Kashmir to the Foreign and Political Minister, Jammu and Kashmir Government, Srinagar published in Government Gazette dated 17th Magh 1987. [Editor]

[Translated from original in Urdu published in Government Gazette dated 15th Maghar 1965.]

NOTFICATION No. 23.

Whereas by command of His Highness (vide Chief Minister's letter No. 6765, dated 30th October, 1908) the revised Post Office Act, 1898 enforced in British India, has been ordered to be enforced in the State territories, it is hereby published for general information that the Post Office Act, 1898 shall be considered to be enforced in the State from the date of the letter of the Chief Minister subject to such conditions and restrictions as were considered necessary when the Act of 1866 was enforced vide Notification 'No. 2040, dated 25th July 1895. This Notification shall be considered as amended to this extent that instead of Act of 1866, the Post Office Act, 1898 is enforced.

DATED, 5TH MAGHAR, 1965.

(Sd.) PIRZADA MAULVI MOHD. HUSSAIN KHAN,

Judge High Court,

Jammu and Kashmir.

APPENDIX.

THE GOVERNMENT SAVINGS BANKS ACT, 1873. Act V of 1873.

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THE GOVERNMENT SAVINGS BANKS ACT, 1873. Act No. V of 18731.

[28th January, 1873.]

AN ACT TO AMEND THE LAW RELATING TO GOVERNMENT SAVINGS BANKS.

[As modified up to the 1st September, 1928.]

Whereas it is expedient to amend the law relating to the payment of deposits in Government Savings Banks; It is hereby enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be called the Government Savings
Banks Act, 1873.

For Statement of Objects and Reasons to the Bill, which was based upon the Trustee Savings Banks Act, 1863 (26 & 27 Vict., c. 87), s. 30, see G zette of Indi, 1872, Pt. V, p. 575; for Proceedings in Council, see ibid, 1872, supplement, pp. 727, 743; ibid, 1873, Supplement, pp. 150 and 221.

Act V of 1873 h s been declared in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899) [B. & O. Code, Vol. I] and in the Ar kan Hill District by the Arakan Hill District Laws Regulation, 1916 (I of 1916), s. 2 [Burma Code, Vol. I].

It has been declared, by notification under s. 3 (a) of the Scheduled District Act 1874 (XIV of 1874), to be in force in the following Scheduled Districts, no mely. — the Districts of Hazaribagh, Lohard go [now called the Ranchi District, see Calcutta Gazette, 1899, Pt. 1. p. 44] and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singbhum [G zette of India, 1881, Pt 1, p. 504]. The District of Lohardaga included at this time the District of Palamau, separated in 1894.

It has been declared to be in force in Upper Burma generally (except the Shan States), by

the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Burma Code, Vol. I.

It extends to the whole of British India.

Local extent,

[Commencement.] Rep. by the Repealing Act, 1874 (XVI of 1874). 2. [Repeal of Act XXVI of 1855.] Rep. by the Repealing Act, 1873 (XII of 1873).

3. In this Act-Interpretationclause.

"depositor" means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank; and "deposit" means money so deposited:

"["Secretary" means, in the case of a Post Office Savings Bank, the Postmaster-General appointed for the area in which the Savings Bank is situate.]

'["Minor" means a person who is not deemed to have attained his majority under the Indian Majority Act, 1875.]

DEPOSITS BELONGING TO THE ESTATES OF DECEASED PERSONS.

.[4. If a depositor dies and probate of his will or letters of administration of his estate or a certificate granted under the Succession Certificate Act, 1889, is not within three months of the death VII of 1898. Paymet on death of depositor. of the depositor produced to the Secretary of the Government Savings Bank in which the deposit is, then-

(a) if the deposit does not exceed three thousand rupees, the Secretary may pay the same to any person appearing to him to be entitled to receive it or to

administer the estate of the deceased, or

(b) if the deposit does not exceed one hundred rupees, any officer employed in the management of a Government Savings Bank, who is empowered in this behalf by a general or special order of the Governor General in Council, may, subject to any general or special orders of the Secretary in this behalf, pay the deposit to any person appearing to him to be entitled to receive it or to administer the estate.]

5. Such payment shall be a full discharge from all further liability in res-

pect of the money so paid: Payment to be a

discharge.

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from Saving of right of the person receiving the same the amount remaining in his executor. hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act, or* Saving of right of Act No. XXVI of 1855, to any person, and remaining creditor. in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate

of the deceased.

This definition was substituted by s. 2 of the Government Savings Banks (Amendment) Act, 1923 (XVI of 1923).

This definition was substituted by s. 2 and Schedule of the Amending Act, 1916 (XIII of 1916).

19. 4 was substituted by a. 3 of the Government Savings Banks (Amendment) Act, 1923

'The words "the said" were repealed by the Repealing and Amending Act, 1891 (XII of 1191).

'Act XXVI of 1855 was repealed by s, 2 of this Act,

6. The Secretary of any such Bank '[or any officer empowered under section 4] may take such security as he thinks necessary from Security for due any person to whom he pays any money under section 4 for administration. the due administration of the money so paid, and he may assign the said security to any person interested in such administration.

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank '[or Power to adminisany officer empowered under section 4] may take evidence on ter oath. oath or affirmation according to the law for the time being relating to oaths and affirmations.

Any person who, upon such oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or Penalty for false does not believe to be true, shall be deemed guilty of an offence XLV of 1860 statements. under section 193 of the Indian Penal Code.2

Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed '[three thousand rupees], such amount Deposit when exshall be excluded in computing the fee chargeable, under the cluded in computing VII of 1870. court-fees. Court-fees Act, 1870, on the probate, or letters of administration, or certificate (if any), granted in respect of his property:

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorised to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount.

9. Nothing hereinbefore contained applies to money belonging to the estate of any European officer, non-commissioned officer or soldier Act not to apply to dying in Her Majesty's service in India, or of any European deposits belonging to who, at the time of his death, was a deserter from the said estates of European service. soldiers or deserters.

DEPOSITS BELONGING TO MINORS.

10. Any deposit made by or on behalf of, any minor may be paid to him personally if he made the deposit, or to his guardian for his Payment of depouse if the deposit was made by any person other than the minor, sits to minor or together with the interest accrued thereon. guardian.

The receipt of any minor or guardian for money paid to him under this sec-

tion shall be a sufficient discharge therefor.

11. All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deem-Legalization of like ed to have been made in accordance with law. payments heretofore made.

DEPOSITS BELONGING TO LUNATICS.

Payment of depo-12. If any depositor becomes insane or otherwise insits telonging capable of managing his affairs, lunstics.

These words were inserted by s. 4 of the Government Savings Banks (Amendment) Act, 1923 (XVI of 1923).

For Act XLV of 1860, see the revised edition as modified up to 1st February, 1922.

These words were substituted for the words "one thousand rupees" by s. 2 of the Government Saving Banks (Amendment) Act, 1917 (XVII of 1917).

For Act VII of 1870, see the revised edition as modified up to 1st October, 1928. Of. the Savings Banks Act, 1828 (9 Geo. IV, c. 92), a. 10 now repealed by the Savings Banks Act, 1863 (26 and 27 Vict., c. 87).

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary may, from time to time, make payments out of the deposit

to any proper person,

and the receipt of such person, for money paid under this section, shall be a

sufficient discharge therefor.

Where a committee or manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such committee or manager.

DEPOSITS MADE BY MARRIED WOMEN.

13. Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act, 1865' section 4, ap-Payment of marplies to her marriage; and her receipt for money paid to her ried woman's deposits. under this section shall be a sufficient discharge therefor.

X of 1865.

Rules.

14. All certificates under section 8, and all payments under section 10, section 12 or section 13, shall be respectively granted and made by the Secretary of the Bank, subject to such rules consistent Rules regulating under with this Act as the Governor General in Council may from certificate section 8, and p yment under section time to time, prescribe.2 10, 12 or 13.

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THE INDIAN POST OFFICE ACT, 1898.

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THE INDIAN POST OFFICE ACT, 1898. ACT No. VI OF 1898.

[22nd March, 1989.]

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE POST OFFICE IN INDIA.

[As modified up to the 1st July, 1922.]

Whereas it is expedient to consolidate and amend the law relating to the Post Office in India; It is hereby enacted as follows—

CHAPTER I.

PRELIMINARY.

Short title, extent, application and com- Act, 1898.

1. (1) This Act may be called the Indian Post Office mencement.

(2) It extends to the whole of British India, inclusive of 2* * British Baluchistan, the Santal Pargans and the Pargana of Spiti; and it applies also to—

(a) all Native Indian subjects of Her Majesty in any place without and

beyond British India;

(b) all other British subjects within the territories of any Native Prince or Chief in India; and

(c) all servants of the Queen, whether British subjects or not, within the territories of any Native Prince or Chief in India.

(3) It shall come into force on the first day of July, 1898.

Definition.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) the expression "Director General" means the Director General of [Posts and Telegraphs]:

1For Statement of Objects and Reasons, see Gazette of India, 1897, Pt. V, p. 385; for Report of the Select Committee, see ibid 1898, Pt. V, p. 211; for Proceedings in Council see ibid, 1897, Pt. VI, p. 249; ibid, 1898, Pt. VI. pp. 23, 99 and 285 to 289.

The Act has been applied, under s. 3 (2) of the Chin Hills Regulation, 1896 (5 of 1896), to tracts in which is. 2 and 4 to 41 of the Regulation have been applied, see Burma Gazette, 1898,

Pt. I. p. 420

It has been declared to be applicable to members of a Hill-tribe in a Hill-tract under s. 8 (2) of the Kachin Hill Tribes Regulation, 1895 (1 of 1895) see Burma Gazette, 1898, Ft. I, p. 564.

It has been declared to be in force in the District of Angul, by s. 3 of the Angul Laws Regulation, 1913 (3 of 1913), Bihar and Orissa Code.

It has been declared to be in force in the Chittagong Hill-tracts by the Chittagong Hill-tract Regulation, 1900 (1 of 1900), Bengal Code.

It has been dealered to be in force in Honor

Laws Act, 1898 (13 of 1868) Burma Code.

It has been declared to be in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1868) Burma Code.

It has been declared to be in force in the Arakan Hill District by a 2 of the Arakan Hill

It has been declared to be in force in the Arakan Hill District by s. 2 of the Arakan Hill District Laws Regulation, 1916 (1 of 1916).

As to Rules made under the Post Office Act, which are now in force or are in force from time to time, see the Indian Post of Guide, which is published by the Post Office.

2The word "Upper Burma" were repealed by the Burma Laws Act, 1898 (13 of 1898), Burma Code.

'These words were substituted for the words "the Post Office of India" by s. 3 of the Indian Post Office and Telegraph (Amendment) Act, 1914 (14 of 1914), General Acts, Vol. VIII.

(b) the expression" inland," used in relation to a postal article, means—
(i) posted in British India and addressed to any place in British India

or to any place for which a Post Office is established by the Governor General in Counil beyond the limits of British India; or

(ii) posted at any Post Office established by the Governor General in in Council beyond the limits of British India and addressed to any place for which any such Post Office is established or to any place in British India:

Provided that the expression "inland" shall not apply to any class of postal articles which may be specified in this behalf by the Governor General in Council by notification in the Gazette of India, when posted in or at or addressed to any places or posts offices which may be described in such notification.]

(c) the expression "mail bag" includes a bag, box, parcel or any other envelope or covering in which postal articles in course of transmission by post are

conveyed, whether it does or does not contain any such article:

(d) the expression "mail ship" means a ship employed for carrying mails, pursuant to contract or continuing arrangement, by the Government of India or Her Majesty's Government or the Government of any British possession or foreign country:

(e) the expression " officer of the Post Office" includes any person employ-

ed in any business of the Post Office or on behalf of the Post Office:

(f) the expression "postage" means the duty chargeable for the transmis-

sion by post of postal articles:

(g) the expression "postage stamp" means any stamp provided by the Governor General in Council for denoting postage or other fees or sums payable in respect of postal articles under this Act, and includes adhesive postage stamps and stamps printed, embossed, impressed or otherwise indicated on any envelope, wrapper, postcard or other article:

(h) the expression "post office" includes every house, building, room, carriage or place used for the purposes of the Post Office, and every letter-box

provided by the post office for the reception of postal articles:

(i) the expression "postal article" includes a letter, postcard, newspaper, book, pattern or sample packet, parcel and every article or thing transmissible by post:

(j) the expression "Post Master General" includes a Deputy Post Master

General or other officer exercising the powers of a Post Master General: and

(k) the expression "the Post Office" means the department '[established for the purpose of carrying the provisions of this Act into effect and] presided over by the Director General.

3. For the purposes of this Act,—

- (a) a postal article shall be deemed to be in course of transmission by post

 Mennings of "in from the time of its being delivered to a Post Office to the time
 course of transmission of its being delivered to the addressee or of its being returned
 by post" and "delito the sender or otherwise disposed of under Chapter VII.
 - (b) the delivery of a postal article of any description to a postman or other person authorised to receive postal articles of that description for the post shall be deemed to be a delivery to a Post Office: and
 - (c) the delivery of a postal article at the house or office of the addressee, or to the addressee or his servant or agent or other person considered to be au-

^{&#}x27;This proviso was added by s. 2 of the Indi in Post Office (Amendment, Act, 1903 (2 of 1903), General Acts, Vol. V.

These words were inserted by s. 3 of the Indian Post Office and Telegraph (Amendment) Act, 1914 (14 of 1914), General Acts, Vol. VIII.

thorised to receive the article according to the usual manner of delivering postal articles to the addressee, shall be deemed to be delivery to the addressee.

CHAPTER II.

PRIVILEGE AND PROTECTION OF THE GOVERNMENT.

Exclusive privilege established by the Governor General in Council, the Government ernor General in Council shall have the exclusive privilege of conveying letters ernor General in Council shall have the exclusive privilege of conveying by post, from one place to another, all letters, exernment.

cept in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching and delivering all letters, except in the following cases, that is to say:—

(a) letters sent by a private friend in his way journey or travel, to be delivered by him to the person to whom they are directed, without hire, reward or

other profit or advantage for receiving, carrying or delivering them;

(b) letters solely concerning the affairs of the sender or receiver thereof,

sent by a messenger on purpose; and

(c) letters solely concerning goods or property sent either by sea or by land to be delivered with the goods or property which the letters concern, without hire, reward or other profit or advantage for receiving, carrying, or delivering them:

Provided that nothing in this section shall authorize any person to make a collection of letters excepted as aforesaid for the purpose of sending them otherwise than by post.

(2) For the purposes of this section and section 5 the expression " letters"

includes postcards.

5. Wherever within British India posts or postal communications are es-Certain persons ex- tablished by the Governor General in Council, the following pressly forbidden to persons are expressly forbidden to collect, carry, tender or convey letters. deliver letters, or to receive letters for the purpose of carrying or delivering them, although they obtain no hire, reward or other profit or advantage for so doing, that is to say:—

(a) common carriers of passengers or goods, and their servants or agents, except as regards letters solely concerning goods in their carts or carriages; and

(b) owners and masters of vessels sailing or passing on any river or canal in British India, or between any ports or places in British India, and their servants or agents, except as regards letters solely concerning goods on board, and except as regards postal articles received for conveyance under Chapter VIII.

6. The Secretary of State for India in Council shall not incur any liability Exemption from by reason of the loss, misdelivery or delay of, or damage liability for loss, to any postal article in course of transmission by misdelivery, delay or post, except in so far as such liability may in express terms be undertaken by the Governor General in Council as hereinafter provided; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has caused the same fraudulently or by his wilful act or default.

CHAPTER III.

POSTAGE.

7. (1) The Governor General in Council may, by notification in the Gazette of India, fix the rates of postage and other sums to be charged in respect of postal articles sent by the inland post under this Act, and may make rules as to the scale of weights, terms and conditions subject to which the rates so fixed shall be charged:

Provided that the highest rate of postage, when prepaid, shall not exceed the rate set forth for each class of postal articles in the first schedule.

(2) Unless and until such notification as aforesaid is issued, the rates set forth

in the said schedule shall be the rates chargeable under this Act.

(3) The Governor General in Council may, by notification in the Gazette of India, declare what packets may be sent by the inland post as book, pattern and sample packets within the meaning of this Act.

Power to make 8. The Governor General in Council may, by rule,-

rules as to payment of postage and fees in certain cases.

(a) require the prepayment of postage on inland postal articles or any class of inland postal articles, and prescribe the manner in which prepayment shall be made;

(b) prescribe the postage to be charged on inland postal articles when the

postage is not prepaid or is insufficiently prepaid;

(c) provide for the redirection of postal articles and the transmission by post of articles so redirected, either free of charge or subject to such further charge as may be specified in the rules; and

(d) prescribe the fees to be charged for the "express delivery" of postal articles, in addition to, or instead of, any other postage chargeable thereon under

this Act.

Explanation.—" Express delivery" means delivery by a special messenger

or conveyance.

- 9. (1) The Governor General in Council may make rules providing for the Power to make registration of newspapers for transmission by inland post as rules as to registered registered newspapers. newspapers.
 - (2) For the purpose of such registration, every publication, consisting wholly or in great part of political or other news, or of articles relating thereto or to other current topics, with or without advertisements, shall be deemed a newspaper, subject to the following conditions, namely:-

(a) that it is published in numbers at intervals of not more than thirty-one

days; and

(b) that it has a bona fide list of subscribers.

(3) An extra or supplement to a newspaper bearing the same date as the newspaper and transmitted therewith, shall be deemed to be part of the newspaper:

Provided that no such extra or supplement shall be so deemed unless it consists wholly or in great part of matter like that of the newspaper and has the title and date of publication of the newspaper printed at the top of each page.

Explanation .- Nothing in this section or in the rules thereunder shall be con-

strued to render it conpulsory to send newspapers by the inland post.

10. (1) Where arrangements are in force with the United Kingdom, or with Power to declare any British possession or foreign country, for the transmission rates of foreign post- by post of postal articles between British India and the United Kingdom or such possession or country, the Governor General in Council may, in conformity with the provisions of such arrangements, declare what postage rates and other sums shall be charged in respect of such postal articles, and may make rules as to the scale of weight, terms and conditions subject to which the rates so declared shall be charged.

(2) Unless and until such declaration as aforesaid is made, the existing rates

and regulations shall continue in force.

11. (1) The addressee of a postal article on which postage or any other sum Liability for pay- chargeable under this Act is due, shall be bound to pay ment of postage. the postage or sum so chargeable on his accepting delivery of the postal article, unless he forthwith returns it unopened:

Provided that, if any such postal article appears to the satisfaction of the Post Master General to have been maliciously sent for the purpose of annoying

the adddressee, he may remit the postage.

(2) If any postal article on which postage or any other sum chargeable under this Act is due, is refused or returned as as aforesaid, or if the addressee is dead or cannot be found, then the sender shall be bound to pay the postage or sum due thereon under this Act.

- Recovery of post. under this Act in respect of any postal article, the sum so due may, on application made by an officer of the Post Office due in respect of authorise in this behalf by the written order of the Post Office from the person so refusing, as if it were a fine imposed under this Act, by any Magistrate having jurisdiction where that person may for the time being be resident; and the Post Master General may further direct that any other postal article, not being on Her Majesty's service, addressed to that person shall be withheld from him until the sum so due is paid or recovered as aforesaid.
- 13. When a postal article, on which any duty of customs is payable, has been received by post from any place beyond the limits of Br itish India, and the duty has been paid by the postal author ities at any customs-port or elsewhere, the amount of the duty postage shall be recoverable as if it were postage due under this Act.

14. In every proceeding for the recovery of any postage or other sum aPost Office marks leged to be due under this Act in respect of a postal article,—
prima facie evidence
of certain facts
denoted.

(a) the production of the postal article, having thereon the official mark of the Post Office denoting that the article has been refused, or that the addressee is dead or cannot be found, shall be *prima facie* evidence of the fact so denoted, and

(b) the person from whom the postal article purports to have come, shall,

until the contrary is proved, be deemed to be the sender thereof.

Official mark to sum is due in respect thereof to the Post Office of British India be evidence of or to the Post Office of the United Kingdom or of any British amount of postage. possession or foreign country, shall be prima facie evidence that the sum denoted as aforesaid is so due.

CHAPTER IV.

POSTAGE STAMPS.

- Provision of postage stamps and think necessary for the purposes of this Act.

 Provision of postage stamps and think necessary for the purposes of this Act.
- (2) The Governor General in Council may make rules as to the supply, sale and use of postage stamps.

(3) In particular and without prejudice to the generality of the foregoing

power, such rules may-

(a) fix the price at which postage stamps shall be sold;

(b) declare the classes of postal articles in respect of which postage stamps shall be used for the payment of postage or other sums chargeable under this Act,

(c) prescribe the conditions with regard to perforation, defacement and all other matters subject to which postage stamps may be accepted or refused in payment of postage or other sums;

(d) regulate the custody, supply and sale of postage stamps;

(e) declare the persons by whom and the terms and conditions subject to

which postage stamps may be sold, and

(f) prescribe the duties and remuneration of persons selling postage stamps. 17. (1) Postage stamps provided under section 16 shall be deemed to be

stamps issued by Government for the purpose of revenue with-Postage stamps to in the meaning of the Indian Penal Code, and, subject to the XLV of :860, be deemed to be the other provisions of this Act, shall be used for the prepayst mps for the purment or postage or other sums chargeable under this Act in pose of revenue. respect of postal articles, except where the Governor General in Council directs

that prepayment shall be made in some other way.

(2) Where the Governor General in Council has directed that prepayment of postage, or other sums chargeable under this Act in respect of postal articles may be made by prepaying the value denoted by the impressions of stamping machines issued under his authority, the impression of any such machines shall likewise be deemed to be a stamp issued by Government for the purpose of revenue, within the meaning of the Indian Penal Code.]

CHAPTER V.

CONDITIONS OF TRANSMISSION OF POSTAL ARTICLES.

18. (1) The Governor General in Council may, by rule, provide for the redelivery to the sender, without reference to the consent of the Redelivery to senaddressee and subject to such conditions (if any) as may be der of postal article in course of transmisdeemed fit, of any postal article in course of transmission by sion by post. post.

(2) Save as provided by any rules that may be made under sub-section (1), the sender shall not be entitled to recall a postal article in course of transmission

by post.

19. (1) Except as otherwise provided by rule and subject to such conditions Trusmission by as may be prescribed thereby, no person shall send by post any post of anything in- explosive, dangerous, filthy, noxious or deleterious substance, jurious prohibited. any sharp instrument not properly protected, or any living creature which is either noxious or likely to injure postal articles in course of transmission by post or any officer of the Post Office.

(2) No person shall send by post any article or thing which is likely to injure postal articles in course of transmission by post or any officer of the Post Office.

Transmission post of anything indecent, etc., prohibited.

> (a) any indecent or obscene printing, painting, photograph, lithograph, engraving, book or card, or any other indecent or obscene article, 10

20. No person shall send by post-

(b) any postal article having thereon, or on the cover thereof, any words, marks or designs of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character.

Bection 17 (2) added vide Act 16 of 1924.

- 21. '[(1) The Governor General in Council may make rules as to the trans-Power to make mission of articles by post.]
 rules as to transmission by post of postal
 articles.
 - '[(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) specify articles which may not be transmitted by post;

(b) prescribe conditions on which articles may be transmitted by post;

- (c) provide for the detention and disposal of articles in course of transmission by post in contravention of rules made under clause (a) or clause (b);
- (d) provide for the granting of receipts for, and the granting and obtaining of certificates of, posting and delivery of postal articles and the sums to be paid, in addition to any other postage, for such receipts and certificates; and
- (e) regulate covers, forms, dimensions, maximum weights, and enclosures, and the use of postal articles, other than letters, for making communications.]

(3) Postal articles shall be posted and delivered at such times and in such manner as the Director General may, by order, from time to time appoint.

Power to postpone be delayed by the despatch or delivery therefrom at the same despatch or delivery time of book, pattern or sample packets and parcels, or any of certain postal articles.

to such rules as the Governor General in Council may make in this behalf, be detained in the Post Office so long as may be necessary.

(2) Where separate parcel posts are established, parcels may be forwarded and conveyed by them, being detained, if necessary, in the Post Office for that purpose.

Power to deal with visions of this Act may be detained and either returned to postal articles posted in contravention of with such additional postage (if any) as the Governor General in Council may, by rule, direct.

(2) Any officer in charge of a Post Office or authorized by the Post Master General in this behalf may open or unfasten any newspaper or any book, pattern or sample packet, in course of transmission by post, which he suspects to have been sent by post in contravention of '[section 20, clause (a), or of section 21 or of any of the provisions of this Act relating to postage.

(3) Notwithstanding anything in sub-section (1)-

(a) any postal article sent by post in contravention of the provisions of section 19 may, under the authority of the Post Master General, if

necessary, be opened and destroyed; and

'[(b) any postal article sent by post in contravention of the provisions of section 20 may be disposed of in such manner as the dovernor deneral in Council may, by rule, direct.]

These sub-sec ions were su stituted by s. 2 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912), General Acts. Vol. VII.

These words and figures were inserted by s. 3 of the Indian Post Office (Amendment) Act, 1912 (5 of 1912), General Acts, Vol. 111.

This clause was substituted by s. 3 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912), General Acts, Vol. VII.

24. [Except as otherwise provided in this Act, where a postal article suspected to contain any goods of which the import by post or Power to deal with the transmission by post is prohibited by or under any enactpostl articles conment for the time being in force,] or anything liable to duty is taining goods conreceived for delivery at a Post Office, the officer in charge of traband or liable to the Post Office shall send a notice in writing to the duty. addressee inviting him to attend, either in person or by agent, within a specified time at the Post Office, and shall in the presence of the addressee or his agent, or if the addressee or his agent fails to attend as aforesaid then in his absence, open and examine the postal article:

Provided, first, that, if the Director General so directs in the case of any Post Office or class of Post Offices, the officer in charge of the Post Office shall call in two respectable persons as witnesses before he opens a postal article in the absence

of the addressee or his agent:

Provided, secondly, that in all cases a postal article, after being opened under this section, shall be delivered to the addressee, unless it is required for the purpose of any further proceeding under this or any other law or enactment for the time being in force, and that the opening of the postal article and the circumstances connected therewith shall be immediately reported to the Post Master General:

•[24A. The Governor General in Council may, by general or special order, Power to deliver empower any officer of the Post Office, specified in such order articles to to deliver any postal article, received from beyond the limits of British India and suspected to contain anything liable to Customs authority. duty, to such Customs authority as may be specified in the said order, and such Customs authority shall deal with such article in accordance with the provisions of the Sea Customs Act, 1878, or of any other law for the time being in torce.] VIII of 1878.

25. Where a notification has been published under section 19 of the Sea Cus-

Power to inter. toms Act, 1878, in respect of any goods of any specified des- VIII of 1878. cept notified goods cription, '[or where the import or export into or from British during transmission India of goods of any suspected description has been prohibiby post. ted or restricted by or under any other enactment for the time being in force] any officer of the Post Office empowered in this behalf by the Governor General in Council may search, or cause search to be made, for any such goods in course of transmiss.on by post, and shall deliver '[all postal articles reasonably believed or found to contain such goods] to such officer as the Governor General in Council may appoint in this behalf, and such goods may be disposed of in such manner as the Governor General in Council may direct.

·[In carrying out any such search, such officer of the Post Office may open or unfasten, or cause to be opened or unfastened, any newspaper or any book, pat-

tern or sample packet in course of transmission by post.]

26. (1) On the occurrence of any public emergency, or in the interest of the public safety or tranquillity, the Governor General in Council Power to intercept postal articles or a Local Government, or any other specially authorized in for pu lic good. this behalf by the Governor General in Council, may, by order in writing, direct that any postal article or class or description of postal articles

The third proviso to s. 24 w.s omitted by \$ 2 of the ladian Post Other (Amendment) Act,

This section was inserted by s. 3 of the Indian Post Office (Amendment) Act, 1921 (15 of 1921). "Inserted by Act II of 1930.

^{&#}x27;These words were substituted for the words "Where a post il article, enspected to contain any contraband goods" by s. 4 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912)

These words were superstuted for the words " all such goods found " ly s. 5 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912). This p tragraph was added by soid.

in course of transmission by post shall be intercepted or detained or '[shall be disposed of in such manner as the authority issuing the order may direct].

(2) If any doubt arises as to the existence of a public emergency, or as to whether any act done under sub-section (1) was in the interest of the public safety or tranquillity, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.

27. (1) Where a postal article is received by post from any place beyond the limits of British India-

Power to deal with postal articles from abruad bearing fictitious or previously used stamps.

> (a) bearing a fictitious postage stamps, that is to say, any facsimile or imitation or representation of postage stamp, or

> (b) purporting to be prepaid with any postage stamp which has been

previously used to prepay any other postal article,

the officer in charge of the Post Office at which the postal article is received, shall send a notice to the addressee inviting him to attend, either in person or by agent, within a specified time at the Post Office to receive delivery of the postal article.

(2) If the addressee or his agent attends at the Post Office within the time specified in the notice and consents to make known to the officer in charge of the Post Office the name and address of the sender of the postal article and to redeliver to the officer aforesaid the portion of the postal article which bears the address and the fictitious or previously used postage stamp, or, if the postal article is inseparable from the stamp, the entire postal article, the postal article shall be delivered to the addressee or his agent.

(3) If the addressee or his agent fails to attend at the Post Office within the time specified in the notice, or, having attended within that time, refuses to make known the name and address of the sender or to redeliver the postal article or portion thereof as required by sub-section (2), the postal article shall not be delivered to him, but shall be disposed of in such manner as the Governor General in Council

may direct.

Explanation.—For the purposes of this section, the expression "postage stamp" includes any postage stamp for denoting any rate or duty of postage of any part of Her Majesty's dominions or of any Native State or foreign country, '[and the impression of any stamping machine provided or authorized for the like purpose by or under the authority of the Government of such part, State or country

*[27A. No newspaper printed and published in British India without conof forming to the rules laid down in the Press and Registration Probibition XXV of 1867. transmission by post of Books Act, 18674, shall be transmitted by post.]

of certain news.

papers.

²[27B. (1) Any officer of the Post Office authorised by the Post Master General in this behalf may detain any postal article in course Power to det in of transmission by post which he suspects to containnewsp.per .. nu other articles being trausmitted by pust.

^{&#}x27;These words were substituted for the words "shall be delivered to the Government or to an officer thereof mentioned in the order, to be disposed of in such manuel as the Governor General in Conneil may direct " by 8. 6 of ibid.

Words in brackets in Explanation to 8. 27 .dded vid. Act 16 of 1924. This section was inserted by 8.6 and Fourth Schedule of the Press Law Repeal and Amendment Act, .922 (.4 ot .922).

[&]quot;General Acts, Vol. I.

(a) (i) any newspaper or book as defined in the Press and Registration of Books Act, 18671; or

XXV of 1867.

(ii) any document; containing any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code1; or (b) any newspaper as defined in the Press and Registration of Books Act,

XLV of 1860.

1867, edited, printed or published otherwise than in conformity

XXV of 1867

with the rules laid down in that Act;

and shall deliver any postal article so detained to such officer as the Local Government may appoint in this behalf.

(2) Any officer detaining any postal article under the provisions of sub-section (1) shall forthwith send by post to the addressee of such article notice of the

fact of such detention.

(3) The Local Government shall cause the contents of any postal article detained under sub-section (1) to be examined, and, if it appears to the Local Gov: ernment that the article contained any newspaper, book or other document, of the nature described in clause (a) or clause (b) of sub-section (1), may pass such orders as to the disposal of the article and its contents as it may deem proper, and, if it does not so appear, shall release the article and its contents, unless the same be otherwise liable to seizure under any law for the time being in force:

Provided that any person interested in any article detained under the provisions of clause (a) of sub-section (1) may, within two months from the date of such detention, apply to the Local Government for release of the same, and the Local Government shall consider such application and pass such orders thereon as it

may deem to be proper:

Provided also that, if such application is rejected the applicant may, within two months from the date of the order rejecting the application, apply to the High Court for release of the article and its contents on the ground that the article did not contain any newspaper, book or other document containing any seditious matter.

(4) In this section "document includes also any painting, drawing or photo-

graph, or other visible representation.]

2[27C. Every application made under the second proviso to sub-section (3) of section 27B shall be heard and determined in the manner Procedure for disprovided by sections 99D to 99F of the Code of Criminal Proposil by High Court cedure, 1898, by a Special Bench of the High Court constitut- v of 9188. of applications for ed in the manner provided by section 99C, of that Code.] release of newspapers and articles so detained.

1[27D. No order passed or action taken under section 27B shall be called in question in any Court otherwise than in accordance with the second proviso to sub-section (3) of that section. Jurisdiction barred

CHAPTER VI.

REGISTRATION, INSURANCE AND VALUE-PAYABLE POST.

28. The sender of a postal article may, subject to the other provisions of this Act, have the article registered at the Post Office at which Registration of it is posted, and require a receipt therefor; and the Governor postal articles. General in Council may, by notification in the Gazette of

General Acts, Vol. I. These sections were inserted by a 6 and Fourth Schedule of the Press Law Repeal and Amendment Act, 1922 (14 of 1923).

India, direct that, in addition to any postage chargeable under this Act, such further fee as may be fixed by the notification shall be paid on account of the registration of postal articles.

29. (1) The Governor General in Council may make rules as to the registra-

Power to make tion of postal articles.

rules as to registration.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) declare in what cases registration shall be required;

(b) prescribe the manner in which the fees for registration shall be paid;

(c) direct that twice the fee for registration shall be levied on the delivery of a rostal article required to be registered, on which the fee for registration has not been prepaid.

(3) Postal articles made over to the Post Office for the purpose of being registered, shall be delivered, when registered, at such times and in such manner

as the Director General may, by order, from time to time appoint.

30. The Governor General in Council may, by notification in the Gazette Insurance of postal of India, direct—articles.

(a) that any postal article may, subject to the other provisions of this Act, be insured at the Post Office at which it is posted, against the risk of loss or damage in course of transmission by post, and that a receipt therefor shall be granted to the person posting it; and

(b) that, in addition to any postage and fees for registration chargeable under this Act, such further fee as may be fixed by the notification

shall be paid on account of the insurance of postal articles.

31. The Governor General in Council may, by notification in the Gazette Power to require of Irdia, declare in what cases insurance shall be required, insurance of postal and direct that any postal article containing anything requirections.

ed to be insured, which has been posted without being insured, shall be returned to the sender or shall be delivered to the addressee, subject to the payment of such special fee as may be fixed by the notification:

Provided that the levy of such special fee as aforesaid shall not impose any liability upon the Secretary of State for India in council in respect of the postal

article.

- 32. (1) The Governor General in council may make rules as to the insur
 Power to make ance of postal articles.

 rules as to insurance.
 - (2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) declare what classes of postal articles may be insured under section

30;

(b) fix the limit of the amount for which postal articles may be insured; and

(c) prescribe the manner in which the fees for insurance shall be paid.

(3) Postal articles made over to the Post Office for the purpose of being insured, shall be delivered, when insured, at such places and times and in such manner as the Director General may, by order, from time to time appoint.

33. Subject to such conditions and restrictions as the Governor General in Liability in res. Council may, by rule, prescribe, the Secretary of State for pect of postal articles India in Council shall be liable to pay compensation, not exinsured.

ceeding the amount for which a postal article has been insured,

to the sender thereof for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post:

Provided that the compensation so payable shall in no case exceed the value

of the article lost or the amount of the damage caused.

34. The Governor General in Council may, by notification in the Gazette by of India, direct that, subject to the other provisions of this Transmission Act and to the payment of fees at such rates as may be fixed post of value-payable by the notification, a sum of money specified in writing at the postal articles. time of posting by the sender of a postal article shall be recoverable on the delivery thereof from the addressee, and that the sum, so recovered, shall be paid to to the sender:

Provided that the Secretary of State for India in Council shall not incur any liability in respect of the sum specified for recovery, unless and until that sum

has been received from the addressee.

Explanation .- Postal articles sent in accordance with the provisions of this sec-

tion may be described as "value-payable" postal articles.

35. (1) The Governor General in Council may make rules as to the trans-

Power to make mission by post of value-payable postal articles. rules as to value pay-

able postal articles.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may-

(a) declare what classes of postal articles may be sent as value-payable

postal articles;

(b) direct that no postal article shall be so sent unless the sender declares that it is sent in execution of a bona fide order received;

(c) limit the value to be recovered on the delivery of any value-payable

postal article1;

- (d) prescribe the form of declaration to be made by the senders of valuepayable postal articles, and the time and manner of the payment of
- *[(e) provide for the retention and repayment to the addressee in cases of fraud of money recovered on the delivery of any value-payable postal article: and

(f) prescribe the fees to be charged for inquiries into complaints regarding the delivery of or payment for value-payable postal articles.]

(3) Postal articles shall be made over to the Post Office for the purpose of being sent as "value-payable" and shall be delivered, when so sent, at such times and in such manner as the Director General may, by order, from time to time appoint.

'[(4) No suit or other legal proceeding shall be instituted against the Secretary of State for India in Council or any officer of the Post Office in respect of anything done, or in good faith purporting to be done, under any rule made under

clause (e) of sub-section (2).]

36. (1) Where arrangements are in force with the United Kingdom, or with any British possession, Native State or foreign country, for effect to arrangethe transmission by post of registered, insured or value-payments with other able postal articles between British India and the United countries. Kingdom or such possession, State or country, the Governor General in Council may make rules to give effect to such arrangements.

^{&#}x27;The word "and" was omitted by s. 7 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912), General Acts, Vol. VII.

These clauses were added by s. 7 of ibid. This sub-section was added by s. 7 of ibid,

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the form of declaration to be made by the senders of such postal arti-

cles as aforesaid; and

(b) the fees to be charged in respect thereof.

CHAPTER VII.

UNDELIVERED POSTAL ARTICLES.

- Power to make of postal articles which for any reason cannot be delivered rules as to disposal (hereinafter referred to as "undelivered postal articles").

 of undelivered postal
 urticles.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the period during which undelivered postal articles at a Post

Office shall remain in that office; and

(b) provide for the publication of lists of undelivered postal articles, or of

any class of undelivered postal articles.

(3) Every undelivered postal article, after being detained at a Post Office for the period prescribed by rule under the foregoing provisions of this section, shall be either forwarded, free of further charge, to the Post Office at which it was posted, for return to the sender, or sent to the office of the Post Master General.

38. (1) Every postal article received at the office of the Post Master General Disposal of un- under sub-section (3) of section 37 shall be dealt with as foldelivered postal ows:—

articles at office of Post Master General

> (a) if practicable, it shall be redirected and forwarded by post to the addressee; or,

> (b) if it cannot be redirected and forwarded as aforesaid, it shall be opened by some officer, appointed by the Post Master General in this behalf and bound to secrecy, in order to ascertain the name and address of the sender.

(2) If the name and address of the sender are so ascertained, it shall be returned by post to the sender, free of further charge or subject to such further

charge as the Governor General in Council may, by rule, direct.

39. Undelivered postal articles which cannot be disposed of under the forekinal disposal of going provisions, shall be detained in the office of the Post undelivered postal Master General for such further period (if any), and shall be articles. dealt with in such manner, as the Governor General in Council may, by rule, direct:

Provided that-

(a) letters and postcards shall be destroyed;

(b) money or saleable property, not being of a perishable nature, found in any undelivered postal article, shall be detained for a period of one year in the office of the Post Master General, and, if on the expiration of that period no person has established his right thereto, shall, if money, be credited to the Post Office, and, if saleable property, be sold, the sale-proceeds being credited to the Post Office.

CHAPTER VIII.

SHIP LETTERS.

40. The master of a ship, not being a mail ship, about to depart from any

Duty of moster of ship, departing from any port in British India and not being a mail ship, to convey mail bags.

port in British India to any port within, or any port or place beyond, British India, shall receive on board any mail bag tendered to him by any officer of the Post Office for conveyance, granting a receipt therefor in such form as the Governor General in Council may, by rule, prescribe, and shall, without delay, deliver the same at the port or place of destination.

Outy of master of ship arriving at any port in British India shall, without delay, cause every postal article or mail bag on board which is directed to that port and is within the exclusive priving respect of postal 4, to be delivered either at the Post Office at that port or to some officer of the Post Office authorized in this behalf by the

Post Master General.

(2) If there is on board any postal article or mail bag which is directed to any other place within British India and is within the exclusive privilege aforesaid, the master shall, without delay, report the fact to the officer in charge of the Post Office at the port of arrival and act according to the directions he may receive from such officer, and the receipt of such officer shall discharge him from all further responsibility in respect of the postal article or mail bag.

42. The Governor General in Council may, by notification in the Cazette

Allowance of gratuities for conveyance of postal articles by ships other than mail ships. of India, declare what gratuities shall be allowed to masters of ships, not being mail ships, in respect of postal articles received by them for conveyance on behalf of the Post Office; and the master of a ship, not being mail ship, about to leave any port in British India as aforesaid shall, if he receives on board a mail bag for conveyance, be entitled to demand and

obtain immediately the amount of the gratuity payable under this section in

respect of the mail bag and its contents.

CHAPTER IX.

MONEY ORDERS.

- 43. (1) The Governor General in Council may provide for the remitting of small sums of money through the Post Office by means of money order system money orders, and may make rules as to such money orders.

 as to remittances thereby.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the limit of amount for which money orders may be issued;

(b) the period during which money orders shall remain current; and(c) the rates of commission or the fees to be charged on money orders or in respect thereof.

44. (1) Subject to such conditions as the Governor General in Council may, Power for remitter by rules made under section 43, prescribe in respect of the levy of additional rates of commission or fees or any other matters, a person remitting money through the Post Office by means of a money order may require that the amount of the

order, if not paid to the payee, be repaid to him, or be paid to such person other

than the original payee as he may direct.

(2) If neither the payee nor the remitter of a money order can be found, and if within the period of one year from the date of the issue of the order no claim is made by such payee or remitter, the amount of such order shall not be claimable from the Government.

Power to provide as may be suitable, of money orders, to be called postal orders for the issue of or by such other designation as may be deemed appropriate, postal orders. for certain fixed amounts, and may make rules as to the rates of commission to be charged thereon and the manner in which, and conditions subject to which, they may be issued, paid and cancelled:

Provided that no such order shall be issued for an amount in excess of ten

rupees.

Power to give any British possession, Native State or foreign country, for effect to to arrange. the issue and payment through the Post Office of money ments with other orders between British India and the United Kingdom or such countries.

possession, State or country, the Governor General in Council may make rules to give effect to such arrangements.

(2) In particular and without prejudice to the generality of the foregoing

power, such rules may prescribe-

(a) the manner in which, and the conditions subject to which, such orders may be issued and paid in British India; and

(b) the rates of commission to be charged thereon.

47. If any person, without reasonable excuse, the burden of proving which shall lie on him, neglects or refuses to refund—

order poid to the wrong person.

(a) any amount paid to him in respect of a money order by an officer of the Post Office in excess of what ought to have been paid to him in respect thereof, or

(b) the amount of a money order paid by an officer of the Post Office to him instead of to some other person to whom it ought to have been

such amount shall be recoverable by an officer of the Post Office authorized by the Post Master General in this behalf from the person so neglecting or refusing as if it were an arrear of land-revenue due from him.

48. No suit or other legal proceeding shall be instituted against the Secre-Exemption from tary of State for India in Council or any officer of the Post liability in respect of Office in respect of—

money orders.

(a) any thing done under any rules made by the Governor General in Council under this Chapter; or

(b) the wrong payment of a money order caused by incorrect or incomplete information given by the remitter as to the name and address of the payee, provided that, as regards incomplete information, there was reasonable justification for accepting the information as a sufficient description for the purpose of identifying the payee; or

(c) the payment of any money order being refused or delayed by, or on account of, any accidental neglect, omission or mistake, by, or on the part of, an officer of the Post Office, or for any other cause what-soever, other than the fraud or wilful act or default of such officer; or

(d) any wrong payment of a money order after the expiration of one year

year from the date of the issue of the order; '[or]
'[(e) any wrong payment or delay in payment of a money order beyond
the limits of British India by an officer of any Post Office, not being
one established by the Governor General in Council.]

CHAPTER X.

PENALTIES AND PROCEDURE.

Offences by Officers of the Post Office.

49. Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post,—

Penalty for misconduct of person employed to carry or deliver mail bags or postal articles.

(a) is in a state of intoxication while so employed, or

(b) is guilty of carelessness or other misconduct, whereby the safety of any such mail bag or postal article as aforesaid is endangered, or

(c) loiters or makes delay in the conveyance or delivery of any such mail

bag or postal article as aforesaid, or

(d) does not use due care and diligence safely to convey or deliver any such mail bag or postal article as aforesaid,

shall be punishable with fine which may extend to fifty rupees.

Penalty for vo'unt- al article in course of transmission by post, voluntarily withary withdrawal from draws from the duties of his office without permission or withduty. without permission or novice, of person employed to carry or deliver until be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with bags or postal articles both.

Penalty for making false entry in resister kept by person employed to carry or deliver postal articles.

The penalty for making false entry in resister kept by person false entry in the register with intent to induce the belief that he has visited a place, or delivered a postal article, which he has not visited or delivered, shall be punishable with imprisonment for a term which may extend to six months, or

with fine which may extend to one hundred rupees or with both.

Penalty for theft, or dishonest printion, secretion, destruction, or throwing away of postal articles or dishonest wish purpose whatso-ever, secretes, destroys or throws away, any postal article in course of transmission by post or anything contained therein, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be punishable with fine.

Penalty for open- or causes or suffers to be opened, any postal article in course of transmission by post, or wilfully detains or delays or causes or suffers to be detained or delayed, any such postal article, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both:

The word "or" and clause (e) were added to s. 48 by s. 8 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912), General Acts, Vol. VII.

of 1898.

Provided that nothing in this section shall extend to the opening, detaining or delaying of any postal article under the authority of this Act or in obedience to the order in writing of the Governor General in Council or the direction of a competents Court.

Penalty for fraud in connection with official marks and for receipt of excess postage. 54. Whoever, being an officer of the Post Office,-

(a) fraudulently puts any wrong official mark on a postal article, or

(b) fraudulently alters, removes or causes to disappear any official mark which is on a postal article, or

(c) being entrusted with the delivery of any postal article, knowingly demands or receives any sum of money in respect of the postage there-of which is not chargeable under this Act,

shall be punishable with imprisonment for a term which may extend to two years,

and shall also be punishable with fine.

- Penalty for freudulently preparing, altering, secreting or destroying Post Office or keeping of any document, fraudulently prepares the document, fraudulently prepares the document incorrectly, or alters or secretes or destroys the document, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.
- Penalty for fram. any mail bag, any postal article upon which postage has not dulently sending unbeen paid or charged in the manner prescribed by this Act, paid postal articles. intending thereby to defraud the Government of the postage on such postal article, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.
- Punishment of in India beyond the limits of British India in which posts are offences committed established by the Governor General in Council, or being apin India outside pointed to sell postage stamps in any such place, commits therein an offence punishable under this Act, shall be punishable either in the place where the offence was committed by any Court or officer duly empowered by the Governor General in Council to take cognizance of offences committed in that place, or in any part of British India by any Court of competent jurisdiction as if the offence had been committed in that part.

(2) The provisions of section 188 of the Code of Criminal Procedure, 1898,

shall not apply to any offence referred to in this section.

Other Offences.

Penalty for contrivention of section 4.

- (a) conveys, otherwise than by post, a letter within the exclusive privilege conferred on the Governor General in Council by section 4, or
- (b) performs any service incidental to conveying, otherwise than by post, any letter within the exclusive privilege aforesaid, or

(c) sends or tenders or delivers in order to be sent, otherwise than by post,

a letter within the exclusive privilege aforesaid, or

(d) makes a collection of letters excepted from the exclusive privilege aforesaid for the purpose of sending them otherwise than by post, shall be punishable with fine which may extend to fifty rupees for every such letter.

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees.

59. (1) Whoever, in contravention of the provisions of section 5, carries, receives, tenders or delivers letters, or collects letters, shall be punishable with fine which may extend to fifty rupees for Penalty for contravention of sec-

every such letter. tion 5.

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees.

60. Whoever, being appointed to sell postage stamps,-Penalty for breach

of rules nuder section 16.

(a) takes from any purchaser for any postage stamp or quantity of postage stamps a price higher than that fixed by any rule made under section 16, sub-section (3), clause (a), shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both; or

(b) commits a breach of any other rule made under section 16, shall be punishable with fine which may extend to two hundred rupees.

61. (1) Whoever, in contravention of the provisions of section 19 or section 20, sends or tenders or makes over in order to be sent by Penalty for con. by post any postal article or anything, shall be punishable with imprisonment for a term which may extend to one year tion 19 or 20. or with fine, or with both.

(2) The detention in the Post Office of any postal article on the ground of its having been sent in contravention of the provisions of section 19 or section 20, shall not exempt the sender from any proceedings which might have been taken

if the postal article had been delivered in due course of post.

62. Whoever places in or against any letter-box provided by the Post Office for the reception of postal articles any fire, match or light, Penalty for defilany explosive, dangerous, filthy, noxious or deleterious subing or injuring post office letter boxes. stance, or any fluid, or commits a nuisance in or against any such letter-box or does anything likely to injure any such letter-box or its appurtenances or contents, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

63. Whoever, without due authority, affixes any placard, advertisement, notice, list, document, board or other thing in or on, or paints, Penalty for affixtars or in any way disfigures any Post Office or any letter-box ing without authority, thing to, or provided by the Post Office for the reception of postal articles, painting, tarring or shall be punishable with fine which may extend to fifty rupees. distiguring, Post Office or Post Office

letter-box.

Whoever, being required by this Act to make a declaration in respect of any postal article to be sent by post or the contents or value Penalty for makthereof, makes in his declaration any statement which he ing lause declar . tionknows, or has reason to believe, to be false, or does not believe to be true, shall be punishable with fine which may extend to two hundred rupees, and, if the talse declaration is made for the purpose of defrauding the Government, with fine which may extend to five hundred rupees.

Pen lty for master of ship failing to co:uply with provisions of section 40 or 41.

65. Whoever, being the master of a ship,-

⁽a) fails to comply with the provisions of section 40, or

V of 1898.

(b) without reosonable excuse, the burden of proving which shall lie on him, fails to deliver any postal article or mail bag or to comply with the directions of the officer in charge of the Post Office at a port of arrival, as reequired by section 41,

shall be punishable with fine which may extend to one thousand rupees.

Penalty for detention of letters on baggage or in his possession or custody, after the postal articles board vessel arriving on board or any of them have been sent to the Post Office at in port.

the port of arrival, any postal articles within the exclusive privilege conferred on the Governor General in Council by section 4, shall be punishable with fine which may extend to fifty rupees for every such postal article as aforesaid.

(2) Whoever, being such master or other person as aforesaid, detains any such postal article as aforesaid after demand made for it by an officer of the Post Office, shall be punishable with fine which may extend to one hundred rupees for

every such postal article.

Penalty for det in. for the time being in force] or in obedience to the order in writing mails or opening ing of the Governor General in Council or the direction of a mail bag. competent Court, detains the mails or any postal article in course of transmission by post, or on any pretence opens a mail bag in course of transmission by post, shall be punishable with fine which may extend to two hundred rupees:

Provided that nothing in this section shall prevent the detention of an officer of the Post Office carrying the mails or any postal article in course of transmission by post, on a charge of having committed an offence declared to be cognizable by the Code of Criminal Procedure, 1898, or any other law for the time being in force.

68. Whoever fraudulently retains, or wilfully secretes or makes away with, or keeps or detains, or, when required by an officer of the Post Office, neglects or refuses to deliver up, any postal article in course of transmission by post which ought to have been delivered or mail bags.

Sometimes or makes away with, or keeps or detains, or, when required by an officer of the Post Office, neglects or refuses to deliver up, any postal article in course of transmission by post which ought to have been delivered to any other person, or a mail bag containing a postal article, shall be punishable with imprisonment for a term

which may extend to two years, and shall also be punishable with fine.

69. Whoever, not being an officer of the Post Office, wilfully and maliciously, with intent to injure any person, either opens or causes to be Penalty for unlaw- opened any letter which ought to have been delivered, or does fully diverting letters. any act whereby the due delivery of a letter to any person is prevented or impeded shall be punishable with imprisonment for a term which may extend six months, or with fine which may extend to five hundred rupees, or with both:

Provided that nothing in this section shall apply to a person who does any act to which the section applies, if he is a parent, or in the position of a parent or

guardian, of the addressee, and the addressee is a minor or a ward.

General.

70. Whoever abets the commission of any offence punishable under this Act or attempts to commit any offence so punishable, shall be punishable with the punishment provided for that offence.

Act.

These words were inserted by s. 4 of the Indian Post Office (Amendment) Act, 1921 (15 of 1921).

71. In every prosecution for an offence in respect of mail bag or of any Property in cases of postal article sent by post, it shall be sufficient, for the purpoffences to be laid in pose of the charge, to describe the mail bag or postal article as being the property of the Post Office, and it shall not be necessary to prove that the mail bag or postal article was of any vlaue.

72. No Court shall take cognizance of an offence punishable under any of Authority for proof the provisions of sections 51, 53, 54, clauses (a) and (b), 55, 56, 58, 59, 61, 64, 65, 66 and 67 of this Act, unless upon comtain sections of Act.

General or a Post Master General.

CHAPTER XI.

SUPPLEMENTAL.

73. (1) The Governor General in Council may make rules for the manage-Zamindari and oth- ment of any zamindari or other district post. er district posts.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may declare what portions of this Act shall be applicable to zamindari and other district posts and to the persons employed in connection therewith.

General power to make rules and provisions as to rules

74. (1) In addition to the powers hereinbefore conferred, the Governor General in Council may make rules to carry out any of the purposes and objects of this Act.

under Act.

(2) In making any rule under this Act, the Governor deneral in Council may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

(3) All rules made by the Governor General in Council under this Act shall be published in the Gazette of India and, on such publication, shall have effect

as if enacted by this Act.

75. The Governor General in Council may, by notification in the Gazette of Delegation of pow. of India, authorize, either absolutely or subject to conditions, ers other than rulethe Director General to exercise any of the powers conferred upon the Governor General in Council by this Act, other than a power to make rules.

76. [Repeal.] Repealed by Act 10 of 1914.

77. Nothing in this Act shall derogate from or affect the provisions of the East India Company Act, 1780, or any enactment amending 21 Geo 3, or extending the same.

THE FIRST SCHEDULE.

INLAND POSTAGE RATES.

(See section 7.)

Letters.

For a weight not exceeding one tola ... One anna.

For every tola, or traction thereot, exceeding one tola... Halt an anna.

^{&#}x27;This Schoolule was substituted by s. 4 of the Indian Finance Act, 1938.

Postcards.

| Single | | | Nine pies. |
|--------|------|------|-------------------------|
| Reply | | | One and a half anna |

Book, Pattern and Sample Packets.

For the first two and half tolas or fraction thereof ... Six pies.

For every additional two and a half tolas, or fraction thereof, in excess of two and a half tolas ... Three pies.

Registered Newspapers.

For a weight not exceeding ten tolas ... Quarter of an anna.

For a weight exceeding ten tolas and not exceeding twenty tolas Half an anna.

For every twenty tolas, or fraction thereof, exceeding twenty tolas Half an anna.

Parcels.

For a weight not exceeding forty tolas ... Four annas.

For every forty tolas, or fraction thereof, exceeding forty tolas ... Four annas.

Four annas.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

Repealed by Act 10 of 1914.

THE TRESURE TROVE ACT, 1954.

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- 2. Application.
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- 5. Notice by finder of treasure.
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- Forfeiture of right on failure to appear.
- Matters to be enquired into and determined by the Governor or Wazir Wazarat.
- 11. Treasure how to be divided.
- Time to be allowed for suit by persons claiming the treasure.
- When treasure may be declared ownerless; appeal against such declaration.
- 14. Proceedings subsequent to declaration.

- When no other person claims as owner of place, treasure to be given to finder.
- 16. When only one such person claims and his claim is not disputed, treasure to be divided; and shares to be delivered to parties.
- In case of dispute as to ownership of place, proceedings to be stayed.
- 18. Settlement of such dispute.
- 19. And division thereupon.
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- 21. Decision of Governor final; and no suit to lie against him for acts done bona fide.
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- 24. Penalty on finder failing to give notice etc.
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[Translated from the original in Urdu published in Government Gazette dated 6th Jeth 1954.]

THE TREASURE TROVE ACT, 1954.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide Council Resolution No. 37, dated 30th January 1897.)

Whereas it is expedient to enact the law relating to Treasure Trove, it is hereby commanded as follows:—

1. This Act may be called the Jammu and Kashmir Treasure Trove Act.

2. It shall not apply to a treasure which does not exceed in amount or value of ten rupees and is found from the house in which finder resides or from a Ahata belonging to the finder and which is in his actual possession. But if a treasure consisting of an ancient coins, is found, the finder shall immediately deposit the treasure in the nearest Government Treasury. The finder of such a treasure shall be entitled to such a compensation as may be deemed reasonable by a competent authority after taking into consideration the value of the treasure or rate prevalent thereof.

3. Treasure means anything of any value hidden in the

soil, or in anything affixed thereto.

The word "Chief Revenue Officer" means the Governor of a Province and in case the Governor delegates his functions

in this respect to a Wazir Wazarat, the Wazir of a Wazarat will be considered Chief Revenue Officer for the purposes of these Rules.

4. When a person is in possession of a land or of anything affixed thereto, in pursuance of the terms of a deed of transfer from the original owner, the person in possession shall be held to be bound by these rules if a treasure be found on that land.

5. Whenever any treasure exceeding in amount or value of ten rupees is found, the finder shall give to the Governor having jurisdiction notice in writing as early as practicable—

(a) of the nature and amount or approximate value of

such treasure;

(b) of the place in which it was found;

(c) of the date of the finding;

and either deposit the treasure in the nearest Government Treasury, or give the Governor such security as the Governor may think fit to produce the treasure at such time and place as he may appoint.

6. On receiving such a notice, the Wazir Wazarat shall, after making a summary enquiry, (if any) submit a report regarding the following to the Governor of the Province—

(i) the nature, amount or value of the treasure found;

(ii) the place in which the treasure was found,

(iii) the name of the finder and of owner of the place, in which the treasure is found;

(iv) any other information which may be necessary to

communicate in this behalf.

7. On receiving such an information, the Governor shall, if no summary enquiry under Section 6, has been held, either hold an enquiry himself or direct the Wazir concerned to enquire into the matter.

8. After an enquiry is held on spot, the Governor or the Wazir Wazarat (if the Governor may make over the enquiry to him taking into consideration the difficulties to which the concerned persons will be subjected if ordered to appear at the Governor's head-quarter) shall take the following steps

namely:—

(a) he shall publish a notification to the effect that on a certain date, certain treasure mentioning its nature, amount and approximate value, was found in a certain place, requiring all persons claiming the treasure or any part thereof, to appear personally or by agent before the Governor or the Wazir Wazarat as the case may be, on a day and at a place therein mention ed, such day not being earlier than 3 months, or later than 6 months, after the date of publication of a notification.

(b) When the place in which the treasure appears to the Governor to have been found was on the date of the find-

3-14.]

ing in the possession of some person other than the finder, the Governor or the Wazir Wazarat as the case may be, shall also serve on such other person a special notice in writing to the same effect.

9. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification

issued under Section 8, shall forfeit such right.

10. On the day notified under Section 8 the Governor or the Wazir Wazarat as the case may be, shall cause the treasure to be produced before him and shall enquire as to and determine:-

(a) the person by whom, the place in which and the circumstances under which such treasure was found; and

(b) as far as possible the person by whom such treasure

was hidden.

11. Subject to the Rules which may be framed under provisions of this Act the treasure trove shall be divided up equally between the Government on one hand and the finder and the persons appearing as required by the notification under

Rule 8 and claiming such treasure, on the other.

12. If, on enquiry made under Section 10, the Governor or the Wazir Wazarat sees reason to believe that the treasure was hidden within one hundred years, before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Governor shall make an order adjourning the hearing of the case for such period as he deems sufficient to allow of a suit being instituted in the Civil

Court by the claimant to establish his right.

13. If, upon such enquiry the Governor or the Wazir Wazarat as the case may be, sees no reason to believe that the treasure was so hidden, or if where a period is fixed under Section 12, no suit is instituted as aforesaid within such period to the knowledge of the Governor, or if such suit is instituted within such period and the plaintiff's claim is finally rejected the Governor may declare the treasure to be ownerless. Any person aggrieved by a declaration made under this Section may appeal against the same within two months from the date thereof to the Revenue Minister.

Subject to such appeal every such declaration shall be

final and conclusive.

14. When a declaration has been made in respect of any treasure under section 13, half treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof or be divided between him and the owner of the place in which it has been found in manner hereinafter

provided and the remaining half shall be deposited in the Government treasury. A finder or owner of the place where treasure is found shall not be entitlted to more than half the treasure.

15. When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under Section 8 and claimed a share of the treasure as owner of the place in which it has been found the Governor shall deliver the share to the finder therof.

16. When the declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Governor shall proceed to divide half of the treasure between the finder and the person so claiming according to the following rule, namely:—

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, one-fourth of the value of the treasure shall be allotted to the finder. And if the finder and such person have entered into any such agreement, the half of the amount of the treasure shall go to the Government and the remaining half shall be disposed of in accordance therewith.

Provided that the Governor may, in any case, if he thinks fit, instead of dividing the treasure as directed by this section—

(a) allot to either party the whole or more than his share of such treasure, on such party paying to the Governor for the other party such sum of money, as the Governor may fix as the equivalent of the share of such other party or of the excess so allotted, as the case may be, or

(b) sell half the portion or any portion of that half by public auction and divide the sale proceeds between the parties

according to the rule hereinbefore prescribed.

Provided also that when the Governor has by his declaration under section 13 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 13 by the person whose claim has been so rejected. or when an appeal has been so presented after such appeal has been dismissed.

When the Governor has made a division under this section, he shall deliver to parties half of such treasure or the money in lieu thereof to which they are respectively entitled under such division.

17. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of person who has so appeared and claimed is disputed by the finder of such treasure, the Governor shall deposit such treasure in the State treasury and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a civil court.

18. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the civil court to obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Governor shall be made defendants.

is finally established therein, the Governor shall subject to the provisions of Section II, divide the treasure between him and the finder. If no such suit is instituted as aforesaid, or if the claim of the plaintiff in all such suits are finally rejected, the Governor shall deliver half the amount of the value of the treasure to the finder and the other half shall be the property of the Government.

20. The Governor may at any time after making a declaration under Section 8, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure or any specified portion thereof which is not less than half of it, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion and may place such sum in deposit in the State treasury to the credit of such persons, and thereupon such treasure or portion shall be deemed to be the property of the Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

21. No decision passed or act done bona fide by the Governor under this Act shall be called in question by any civil court and no suit or other proceedings shall lie against him for anything done in good faith in exercise of the powers

hereby conferred.

22. An officer making any inquiry under this Act may exercise any power conferred by the Code of Civil Procedure for the trial of suits.

'23. The Government may from time to time make rules to carry out the purposes of this Act.

PENALTIES.

- 24. If the finder of any treasure fails to give the notice or does not either make the deposit, or give security, required by section 5, or alters or attemps to alter such treasure so as to conceal its identity the share of such treasure or the money in lieu thereof to which he would otherwise be entitled, shall vest in His Highness the Maharaja Bahadur, and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.
- 25. If the owner of the place in which any treasure is found abets, within the meaning of the 'Ranbir Dand Bidhi, any offence under Section 24, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in His Highness the Maharaja Bahadur, and he shall on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine or with both.

NOTIFICATION No. 13.

Dated 25th Bhadon 1966.

REGARDDING THE TREASURE TROVE LAW.

His Highness the Maharaja Bahadur (vide His Highness' command dated 20th June 1920) has been pleased to command that in accordance with the Government of India Resolution No. 6/1668, 82 dated 9th October 1884 instructions be issued to the concerned officers under the law in force in the State with regard to treasure trove so that coins that are found may first be sent to the Asiatic Society of Bengal. In every such case, however, orders of the Government shall first be obtained. When the coins have been received back they shall be kept in the Sri Pratap Museum at Srinagar. His Highness the Maharaja Bahadur has further been pleased to command that there is no objection to an observance of these instructions and that in case two or more coins of the same specimen are found at the same time, there is no objection to keeping the spare coins with the Asiatic Society of Bengal.

The apparent object of this Resolution is the examination by experts of all ancient coins, and the procedure laid down in the Resolution is, in the opinion of His Highness the Maharaja Bahadur, such as will fulfil this object. This will certainly not deprive the local State Museums from having a store of interesting and valuable articles of ancient times the object with which, among other objects, these museums were established. It is therefore notified that the Resolution given below shall form an annexure to the Treasure Trove Rules:—

NO. 889-903.

GOVERNMENT OF INDIA.

Home Department.

PUBLIC.

Calcutta, the 30th March 1907.

RESOLUTION.

READ:

Resolution No. 46-1668-82, dated 9th October 1884, Circular letter Nos. 2193-2202, dated the 29th June 1905, to various Local Governments and their replies.

The resolution quoted above contains some general instructions for the procedure to be adopted in dealing with cases of treasure trove consisting of coins. Since it was issued a few modifications have been made from time to time, and it was recently brought to the notice of the Government of India that the procedure followed by the different Local Governments and Administrations was by no means uniform. Reports have now been received showing the system in force, and the experience of more than twenty years, points to the the expendency of consolidating and amending the instructions issued in 1884, and succeeding years.

2. Among the questions which arise the three most im-

portant are:

(I) the skilled examination of coins;

(2) the selection and distribution of specimens; and

(3) the disposal of the surplus.

Before considering the first of these it may be noted that the orders of 1884 laid down that all coins found as treasure trove should invariably be acquired. The necessity for this direction was subsequently questioned and by Resolution No. 1/13-27 dated January 5th 1885, it was laid down that

while this practice should ordinarily be continued it need not be followed in exceptional cases where large numbers of worthless specimens were concerned. From the reports now received it appears that such cases are more frequent than was supposed. It is, therefore, desireable that full discretion should be allowed by the rules in all cases, subject to the condition that it will be exercised after the examination by experts

referred to in the next paragraph.

3. According to the instructions as modified from time to time, coins found in the Madras Presidency are examined by the authorities of the Madras Museum, those found in the Bombay Presidency are dealt with by the Bombay Branch of the Royal Asiatic Society, those found in Burma are sent to the Superintendent Indian Museum, and all other cases of treasure trove are referred to the Asiatic Society of Bengal. As the Superintendent of the Indian Museum generally has no knowledge of numismatics, the few coins sent up from Burma have, in practice, been dealt with by the Asiatic Society of Bengal, which is thus supposed to be responsible for examining and reporting on all coirs found in India, except cases from the Madras and Bombay Presidencies. The Numismatic Secretary of this Society reports that in 1905 he examined about 9,000 coins, and from the information before it the Government of India has reason to believe that the task imposed on the Society is excessive, and has sometimes led to delay. It would also appear that sufficient importance has hitherto not been attached to the preparation of a detailed record of the origin, surroundings and exact nature of each find. Such a record may be of value for two reasons. It may throw light on the history of the place of discovery or it may give a clue to the attribution and arrangement of different series of coins about which little can be gathered from the inscriptions or devices on the coins themselves. While a single find is often of little value per se the cumulative evidence of a series of careful records may lead to conclusions of the highest importance. To make these records easily accessible it is desirable that they should be prepared on uniform lines. Forms which have been found suitable after the experience of a number of years, are attached to this resolution and the Government of India desire that they may be adopted. The preparation of such reports in all cases adds to the responsibility and lal our of the expert who examine coins, and thus increases the disadvantages of unduly centralising this work. The Governments of the United Provinces and the North-West Frontier Province have already been able to make arrangemments independently of the Asiatic Society of Bengal for the

examination of coins found within their jurisdiction. The field of Indian Numismatics is so large that the co-operation of a number of workers is essential, if the work is to be done satisfactorily, while it has been found that the development of local interest through the Association of a number of numismatists in the examination of treasure trove has also led to the improvement of provincial coin cabinets in other ways. The Director General of Ar hæology will be asked to maintain a list of numismatists who are willing to undertake the examination of coins, and local Governments which desire to make any changes in the existing method of obtaining reports on coins are requested to communicate with him. A brief summary of the results of each year should be prepared in each province. It should show the total number of coins dealt with in the year, classifying them by metal, and also roughly by the series in which they belong. The details of the classi-fication will of course vary in each province, but a suitable form for Northern India will be found in paragraph 10 (II) of the Lucknow Museum Report for 1904-05. Another table should show the number of the coins distributed and it will be convenient to give a short account of any notable finds, detailed publication being reserved for the regular scientific journals. The reports may be published in any annual report which local Government desire, but copies in manuscript should be sent to the Director General of Archæology who will arrange for the preparation of a summary to appear in his annual report.

4. When the coins have been examined and described it is necessary to consider the order in which specimens acquired should be distributed. The orders of 1884, as modified to date, prescribe that if a single specimen is available it should be presented to the Indian Museum, while if more specimens are found, they should be supplied to (1) the Asiatic Society of the Presidency in which the coins were found, (2) the other Asiatic Society (or the Phayre Museum, Rangoon, in the case of coins found in Burma), (3) the Madras Museum, (4) the In lian Museum, (5) the British Museum, (6) the Lahore Museum, (7) the Nagpur Museum, (8) the Lucknow Museum, (9) the Public Library, Shillong and (10) the Archæological Museum, Poona. After a careful review of the circumstances the Government of India are of opinion that the order of the distribution should be changed. It has has been urged that first choice should invariably be given to the Indian Museum, on the ground that the convenience of students is best served by bringing all coins together in a single institution. So far as the study of numismatics from published catalogues is concerned, it may be observed that the collection in the Indian Museum is in some respects less complete than those in other parts of India and markedly inferior to cabinets in Europe. If the study of actual coins is considered, the question of distance arises, and it is probable that students in Southern India or the Funjab, for example, would visit Madras or Lahore rather than Calcutta. But apart from these considerations more importance must be attached to the desirability of encouraging local interest. Treasure trove is not the only source from which the provincial collections have been enriched, and on this ground alone the Government of India hold that the first choice should be given to the Chief museum officially recognised in the province where treasure trove is found, and the second choice to the Indian Museum. They also think that public collections should take precedence of those of the two Asiatic Societies, and that Indian Institutions should be supplied before the British Museum. The Government of India have likewise considered the principles which · should govern the distribution of coins where more than two specimens are found, and they are inclined to think that the simplest procedure is to lay down a fixed order, which has been drawn up on a consideration of the existing circumstances of the various institutions. They, therefore, desire that the following order may be observed:-

The principal museum in the province in which

the treasure is found.

The Indian Museum. The Madras Museum.

The Provincial Museum Lucknow. 4.

The Lahore Museum. The Nagpur Museum.

The Public Library, Shillong.

7· 8. The Archæological Museum, Poona.

The Peshawar Museum. The Quetta Museum.

10. The Ajmer Museum. II.

The Rangoon Museum. 12. The Asiatic Society, Bengal.

13. Bombay Branch, Royal Asiatic Society.

14. The British Museum.

From the reports received it is noticed that some local Governments have presented specimens to more than oneinstitution within their jurisdict.on. The Government of India do not object to this, but they request that for purposes of distribution precedence may be given to the fifteen cabinets named above.

5. It is obviously unnecessary to present coins to an institution, which already possesses exactly similar specimens. To facilitate the selection and to avoid the accumulation of duplicates it is desirable that, wherever possible, complete catalogues of the existing collections should be published, or if these cannot be arranged for, hand lists might be printed giving such details of the coins in each cabinet that they can

be recognised.

6. Under the instructions now in force coins which have been acquired, but are not required for presentation are disposed of at the mints at Bombay and Calcutta at their numismatic value as stated by the experts who have examined them. Owing to the practice under which finds of coins were acquired before they had been examined, the result has been that a very large proportion were absolutely unsaleable and have had to be melted down. Paragraph 2 of this resolution directs that the practice of indiscriminate acquisition should be discontinued. When a finder of coins contains more specimens of a single variety than are required or the purpose of presenting one to each cabinet on the list which requires it, the expert dealing with the case should use his discretion in recommending the acquisition of the whole or part of the remainder for sale at their numismatic value. Surplus coins carefully selected in this manner have been readily disposed of in one province, where they are offered for sale at the art depot in the local museum, and the local Governments should consider whether they can make similar arrangements. Lists of the coins available should be advertised from time to time in the local gazette, and copies should be sent to any numismatists who register their names, as has been the practice hitherto at the mints. It has been usual in some places to allow the decipherer of the coins to retain a specimen when duplicates were available and the Government of India approve of this with some reservations. No official who is enttrusted with the examination of coins as part of his ordinary duties should receive this concession. Coins should only be retained where specimens remain over after all cabinets on the list have been supplied and only one specimen should be kept of each variety. Local Governments will satisfy themselves by calling for such details as they think necessary that the privilege is not abused.

7. Under section 19 of the Indian Treasure Trove Act (VI of 1878) the power of making rules to regulate proceedings under the Act is vested in the local Governments The Government of India desire that the rules now in force may be examined and modified, where necessary, in accordance with

the preceding paragraphs. Copies of the revised rules should be forwarded to the Home Department of the Government of India and the Director General of Archæology for record. While the rules are under consideration the procedure followed in reporting finds of coins and in distributing them should also be examined. It is noticed that the detai's vary considerably in different provinces; and while absolute uniformity is not desired, the need for simplification as far as possible is The procedure followed in one Province is described in an appendix to this resolution, and appears suitable, though it is open to doubt wether the intervention of the Commissioner is necessary. It is probably sufficient that correspondence should be confined to the district office who reports finds, the expert who examines them and the local Government which sanction the acquisition and distribution. In some provinces the examination by experts is postponed till acquisition is complete. Owing to the modifications in procedure indicated in paragraph 2, it will now be necessary to have the coins examined as soon as possible after they reach the Collector of the district.

APPENDIX

The procedure followed under these rules takes the following form. The coin committee selects its own Secretary, the nomination being submitted to Govenment for approval. District Officers report all cases of treasure trove consisting of coins not of British mintage through Commissioners to Government and at the same time send specimens of the coins or the whole find direct to Government (Financial Department). The file in original and the coins are sent (by Government) to the Secretary to the Coin Committee, who may correspond direct with Collectors if he desires to see the whole of the coins. The Secretary then prepares a detailed description of the coins, and frames proposals for acquiring and distributing them, which are circulated to the other members of the Committee for their remarks. Printed forms are used for this purpose copies of which are enclosed. On the return of proposals the Secretary places in the file a short report which gives a very brief description of the coins, the intrinsic value of those which the committee think should be acquired and the number to be presented to each institution. The Secretary at the same time returns the coins arranged in the manner proposed for distribution, and the coins are actually distributed by Government. As the Secretary has always been an official and has little correspondence, no extra establishment was required, and postal charges have been met from his office grant.

FILL UP NUMBER OF COINS HERE.

Report No.

Dated.

Regarding coins found at and received from the Collector under his letter No.

District.

(Form to be used for report regarding coins of every kind except coins of Moghuls).

| | Coins for sale to be purchased at the following rates. | | |
|--|---|--|---|
| Details of coins to be taken for distribution, | | | |
| _ | Inscriptions or Head, Inscription o Tail, | | |
| | Number and description of trassure trove. | | • |

Report No.

District

Dated

Number of coins

which were found at

and the No. and date of letter of Collector (or other officer or his name) from whom received.

(Form for the examination of coins of Moghul Emperors.)

| Coins to be kept for sale at the tollowing places, | |
|--|---|
| Britzin Maseum. | |
| Royal Astatic Society Bombay | |
| Asiatic Society Bengal | |
| Rangoon Museum, | |
| Ajmeer Museum. | |
| Quetta Museum. | |
| Pesbawar Museum. | |
| Archæological Museum Poons. | |
| Public Library Shillong. | |
| Nagpur Museum. | |
| Labore Museum. | |
| Provincial Museum Lucknow | |
| Madara Museum. | |
| Indian Museum Oalcusta. | |
| Local Museum of Province where coins found, | |
| Month. | |
| Hijrl. | |
| Xº Ellebi, | |
| Sample. | |
| Name of mint, | |
| Name of King. | 1 |
| Number and description of trea- sure truves | |

[Translated from original in Urdu jullisted in Government Gazette dated 18th Katik 1954.]

NOTIFICATIONS REGARDING COINAGE.

NOTIFICATION No. 22.

Dated 18th Katik 1954.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council.)

Introduction of British Indian Coinage in place of State Chilki Coinage.

His Highness the Maharaja Bahadur in Council with the approval of the Government of India has been pleased to command that the chili Coinage current in the State now for sometime on account of economic depression be replaced by British Indian Coinage; and after the expiry of a period of six months from the date of issue of this Notification only British Indian Coinage be regarded as legal tender in the territories of the Jammu and Kashmir State. The following rules are therefore framed with a view to enable the public to exchange the current chilki Coins of the State for British Indian Coinage and further to declare British Indian Coinage alone as legal tender in the State.

(a) From the State treasuries situated at Jammu, Srinagar, Gilgit, Skardu and Ladakh fifty-nine British Indian rupees shall be given in exchange for one hundred asal chilki rupees and forty-eight British Indian rupees and annas three

shall be given in exchange for one hundred asal kham.

(b) It shall be incumbent on every person who desires exchange of coinage to submit a written application to Treasury Officer along with *chilki* or *kham* rupees during office hours and such applications shall be considered in the order

of their receipt.

(c) After the expiry of the period of six months fixed under this Notification, the State Coinage shall neither be accepted in lieu of any Government dues, nor shall this coinage be legal tender in the discharge of debts, because British Indian Coinage alone will be regarded as legal tender in the State. Contracts entered into after the date fixed in the Notification specifying payment in State Coinage shall be void and no court shall be competent to pass a decree on the basis of such an agreement.

(d) All rules and laws in force now regarding the cut ting and breaking up of silver coins of the British Indian Gov ernment which due to wear or in any other way have diminished in weight or are counterfeit or have been requisitioned for being returned to the treasury under some notification, shall be applicable to this British Indian Coinage which is current in the Jammu and Kashmir State after the issue of this Notification and the State shall be responsible for all expenses in connection with the cutting and breaking up of such coins.

(e) After the 20th April 1898 A.D. the coinage of the State shall be accepted for sale on the current rates of silver. Rules regarding silver shall be applicable with regard to such

coins.

- (f) All officials as well as the subjects of the State are hereby ordered that they should keep on the look out and be careful to note that no person counterfeits State Coins. Any person who supplies information in this behalf which leads to the conviction of a person counterfeiting State Coins shall receive 30 per cent. as reward and over and above that all counterfeit coins after being broken up shall also be awarded to him.
- (g) On 30th April 1898 and after that all business transactions shall be carried on in British Indian Coinage and all due demands of one person from another shall be payable only in terms of British Indian Coinage.

[Translated from original in Urdu published in Government Gazette dated 14th Poh 1954].

Notification No. 25.

Dated 2nd Poh 1954.

Rules regarding introduction of British Indian Coinage in place of Chilki and Kham Coinages.

The following rules regarding introduction of British Indian Coinage in place of *chilki* and *kham* coinages have been sanctioned by the State Council under Resolution No. 30 dated 20th November \$1897 and are published for general information.

1. With effect from 1st May 1898 only the British Indian rupees, eight annas pieces, four annas pieces and two annas pieces shall be regarded as legal tender in the State. Laws and Rules in force in British India on 1st November 1898 regarding cutting and breaking up of British Indian Silver Coinage diminished in weight due to wear or some other reason of

due to its being base, or having been with drawnfrom circulation by notification, shall apply to all British Indian Silver Coinage current in the State.

[Translated from original in Urdu published in Government Gazette dated 12th Phagan 1954.]

NOTIFICATION.

Replacement of State Bronze Coinage.

With the sanction of the State Council (vide Resolution No. 21 dated 7th February 1897) it is hereby notified for general information that with effect from 1st Baisakh 1955 and thereafter the bronze coinage of the State shall be replaced by the bronze coinage of British India in the Jammu and Kashmir State.

[Translated from original in Urdu published in Government Gazette dated 19th Phagan 1954.]

NOTIFICATION No. 34.

Dated 8th Phagan 1954.

Regarding date and restricting of the return of State Coinage into treasuries.

The State Council (vide Resolution No. 30 dated 7th February 1897) have sanctioned the following notification which is

therefore published for general information:-

State coinage shall not be accepted into State treasuries after 20th Phagan 1954 corresponding to 11th March 1898 unless in special cases such coinage has not been or could not have been paid into the treasury for a special reason. Such cases shall be decided by the Accountant General.

[Translated from original in Urdu published in the Revenue Circular Vol. III, page 118.]

NOTIFICATION No. 4.

Dated 9th Bhadon 1960.

Introduction of sovereigns and half sovereigns in the State.

Under Resolution No. 44 dated 23/26th May 1903 the State Council have resolved that in accordance with the Rules

now in force in British India gold coinage (sovereigns and half sovereigns) be introduced in the Jammu and Kashmir State also.

Copy of a letter No. 14209, dated 12th April 1919, from the Chief Minister, Jammu and Kashmir State, Jammu, to the Judge High Court, Jammu and Kashmir State, Jammu.

With reference to your letter No. 5405/7.L-18, dated 22nd February 1919, I have the honour to inform you that His Highness the Maharaja Sahib Bahadur has been pleased to accord his sanction to the promulgation of the draft Notification regarding prohibition to accept or offer a coin for amount exceeding its face value as recommended by you.

NOTIFICATION.

Whoever sells or purchases or offers to sell or purchase any coin—which is a legal tender under any enactment for the time being in force in British India—for an amount exceeding the face value of such coin, or accepts or offers to accept any such coin in payment of a debt or otherwise for an amount exceeding its face value, shall be punishable with imprisonment for a term which may extend to 3 years, or with fine, or with both.

Explanation.—For the purposes of this rule the face value of a 'sovereign shall be deemed to be fifteen rupees and the face value of other gold coins described in Section II of the India Coinage Act 1906, shall be the corresponding proportion of fifteen rupees.

THE CUSTOMS ACT, 1958.

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THE JAMMU AND KASHMIR CUSTOMS ACT, 1958.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 8, dated 4th December 1901.)

An Act to consolidate and amend the Customs Law of the Jammu and Kashmir State.

Whereas it is expedient to consolidate and amend the law relating to the levy of Customs duties in the Jammu and Kashmir State; it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Jammu and Kashmir Title, extent and com- Customs Act, 1958.

It extends to the whole of the territories of His Highness the Maharaja Bahadur of Jammu and Kashmir, and shall come into force in any local area within the said territories from such date and to such extent as His Highness the Maharaja Bahadur '[or the Government] by notification in the "Jammu and Kashmir Government Gazette" shall direct.

Repeal of existing en. force in any such local area in the said territories, all enactments, rules and regultions in force therein concerning the levy of customs duties or other matters connected with the same, except such of them as are specially saved by notification by 2[the Government] shall be hereby repealed.

*Substituted for "His Highness the Maharaja Bahadur" by Act X of 1996.

[&]quot;In section 1 words "Government" added vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996 and word "or" inserted vide Act II of 1997 published in Government Gazette dated 21st Baisakh, 1997.

- In this Act, unless there be something repugnant in the subject or context,-Interpretation.
- (a) "1[Inspector General] of Customs and Excise" denotes the person authorized to exercise, subject " Superintendent of Customs and Excise ". to the approvel of 2[the Government] the chief control in matters relating to the Customs and Excise revenue.
- (b) "Inspector of Customs and Excise" denotes the Chief Executive Officer of the Customs and "Inspector of Oustoms and Excise ". Excise Department for any Province to which this Act applies.
- (c) "Customs and Excise Officer" includes every officer of the Customs and Excise Department for "Customs and Excise Officer ". the time being in separate charge of a range or customs post or mahal, or duly authorized to perform all, or any special duties of an efficer so in charge.

CHAPTER II.

APPOINTMENT AND POWERS OF OFFICERS ETC.

4. ²[The Government] may appoint such officers as it thinks fit to be Inspector General of Cus-Appointment of Customs and Excise Officers. toms and Excise, Inspectors of Customs and Excise and Customs and Excise Officers, and the Officers so appointed shall exercise the powers conferred and perform the duties imposed by this Act upon such officers.

5. ²[The Government] may delegate any of the powers conferred by section 4 to any of the officers Delegation of power conferred by section 4. named therein, and may further empower them to appoint such other servants as are necessary for the

carrying out of this Act.

Every person appointed in the exercise of such delegated power may be suspended or dismissed by Suspension and dismissal of subordinate officers. the officer who appointed him.

6. ²[The Government] may also from time to time make rules consistent with this Act-Powers to make rules regulating the duties of

Officers under this Act and the delegation of the same.

(a) prescribing and limiting the powers and duties of Customs and Excise Officers and

(b) regulating the delegation of duties to and by such officers.

[&]quot;Inspector General" substituted for "Superintendent" wherever it occurs wide Notification published in Government Gazette dated 10th Sawan 1986. *Substituted for "His Highness the Maharaja Bahadur" by Act X of 1996.

CHAPTER III.

IMPOSITION AND LEVY OF CUSTOMS DUTIES.

Duties to be levied on or exported from the territories of His such articles and of such Highness the Maharaja Bahadur of Jammu and Kashmir from or into British India, foreign territory or the Illaqa of Poonch or imported into time to time direct by notification in the Jammu and Kashmir Government Gazette.

8. The rates at which such duties are imposed shall ordisuch duties shall be narily be either fixed rates per unit of either at fixed rates per quantity or number or percentage rates on unit or ad-valorem.

the value of the goods.

For the purpose of calculation of the latter the value of Definition of "value" the goods shall be deemed to be—
to be applied in calculating ad-valorem rates.

(a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold or are capable of being sold at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever except (in the case of goods imported) of the amount of duties payable on the importation thereof; or

(b) when such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place without any abatement or deduction except as

aforesaid.

owner to declare quantitity, description and value ported.

Maharaja Bahadur shall be bound, if required to do so by a Customs and Excise quired to file, either personally or by a agent, at the customs post of entry or

exit, as the case may be, an invoice stating the quantity, description and value of such goods to the best of his know-ledge and belief, and the Customs and Excise Officer in charge of such post may further require any such person or any other person in possession of any bill, broker's note or other document, whereby the quantity, description or value of any such

In section 7 words "or Shadarwah" deleted in view of the fact that Bahadarwah is amalgamated to the administration of the State from 1st Katik 1986 vide His Highness' Command dated, October 13, 1929 published in Government Gazette dated 8th Katik 1986. See Act II of 1997 published in Government Gazette dated 21st Baisakh, 1997.

Substituted for "His Highness the Maharaja Bahadur" by Act X of 1996,

goods can be ascertained, to produce the same and to furnish, any information relating to such quantity, description or value which it is in his power to furnish, and thereupon such person shall produce such document and furnish such information.

Powers to open packages the furnishing of such documents or information, any Customs and Excise Officer at a post of import or export may open any package and examine any goods proposed to be imported or exported by his post, and may further take samples of such goods for examination or for ascertaining the value thereof on which duties are payable or for any other necessary purpose.

Every such sample shall, if practicable, be, at the option of the owner, either restored to him or sold and the proceeds

accounted for to him.

Provided, in the case of the Kashmir Province, that, if the Inspector General of Customs and Excise shall so order, the goods of any specified traders or goods imported by any specified agency may be treated as goods in bond pending their arrival at a Srinagar Customs Post; or in the case of traders of Muzaffarabad at Muzaffarabad.

Provided also that the luggage belonging to respectable travellers, European or Native, will be treated as in bond pending its arrival at its destination where the necessaary assess-

ments and recovery of duty due will be effected.

Duties when and where invoice and examination provided for above must be paid in full before the goods pass the Customs post of import or export, as the case may be, and the Customs and Excise Officer at the post of import or export will be required to detain all goods on which the duties are not paid in full, such detention being entirely at the risk of the owner.

Proviso as to goods of or imported by the privileged agencies privileged trader. referred to in section 10 above, payment into a Customs Treasury at Srinagar or Muzaffarabad will be allowed, such payment to be made prior to removal of the goods from the Srinagar Customs Office, or from a place at Muzaffarabad specified in this behalf and in respect of all such goods as passed the frontier no deduction on account of wastage, theft or the like being allowed.

Procedure in of case im. goods transported through India in bond port in bond under the under the provisions of the Commercial Treaty of Treaty of the 2nd May, 1870, between the

British Government and His Highness the Maharaja Bahadur of Jammu and Kashmir. Duty on these goods will be levied at the British Indian tariff rate at the post of import, and, if they are transported to the territories of His Highness the Maharaja Bahadur will be credited to his Government, and if to Central Asia, refunded to the traders. When the rates of duty in force in Jammu and Kashmir exceed those in force in British India, the difference will be collected on import of goods brought to the territories of His Highness the Maharaja Bahadur under such arrangements as '[the Government] may from time to time prescribe.

13. The rate of duty applicable to any goods imported or exported shall be the rate in force on the date on which the invoice thereof is deliver-

ed to the Customs and Excise Officer under section 9.

Provided that, if such goods are warehoused under this Act, the rate applicable thereto shall be that in force on the date on which application is made to clear such goods

from the warehouse.

"Provided also that articles imported in bond, shall be liable to duty at the same rates at which they are shown to have been assessed in the British Indian Customs House invoices covering their import excepting the articles for which special rates are prescribed by Notification No. 5 issued under this Act."

Goods composed partly or of a combination of articles that are of dutiable articles or of a combination of articles dutiable at different rates, such goods shall be chargeable with the full duty which would be payable if they were entirely composed of the articles chargeable with the highest rate of duty.

Owner to pay expenses to the proper place for examination and Incidental to compliance with Customs law.

Weighing, and the putting of them into and out of the scales, and the opening, unpacking, bulking, sorting, lotting, marking and numbering of goods, when such operations are necessary or permitted and the removing of goods to, and the placing of them in the proper place of deposit, shall be performed by or at the expense of the owner of such goods.

¹Substituted for "His Highness the Maharaja Bab dur" vide Act X of 1998.

²Section 12 Paras 2 and 3 deleted vide Act II of 1997.

Proviso to section 13 added vide Notification published in Government Gazette dated 27th Katik 1969.

16. When Customs duties or charges have been short levied through inadvertence, error, col-Payment of duties short lusion or misconstruction on the part of the levied or erroneously refunded. Customs and Excise Officers or through mis-statement as to their quantity, description or value on the part of the owner, or when any such duty or charge after having been levied has been owing to any such cause erroneously refunded the person chargeable with the duty or charge so short levied or to whom such refund has erroneously been made shall pay the deficiency or repay the amount paid to him in excess on demand being made within three months from the date of the first assessment or the making of the refund; and the Customs and Excise Officer may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or repaid.

17. No customs duties or charges which have been paid,

No refund of charges erroneously levied or paid unless claimed within three months. and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction shall be returned,

unless such claim is made within three months from the date

of such payment.

"Clams for refunds annually granted to persons holding Muafis of fixed monetary values shall be subject to the same limit of time as is laid down herein above but the period of three months in this case shall commence from the 1st day of the year following that to which the claim for refund may relate."

Power to give credit for if he thinks fit, instead of requiring payand keep amount current ment of Customs duties and charges due from any mercantile firm or public body at the time such duties and charges are payable under this Act, keep with such firm or body an account current of such duties and charges. Such account shall be settled at intervals not exceeding one month, and such firm or body shall make a deposit or furnish security sufficient in the opinion of the Superintendent of Customs and Excise to cover the amount which may at any time be due from them in respect of such duties and charges.

CHAPTER IV.

EXEMPTION FROM CUSTOMS DUTIES.

¹19. Omitted.

Bection 19 omitted vide Notification published in Government Gazette dated 11th Baisakh 1988.

20. Goods imported by traders with Central Asia shall be similarly exempt so long as they are not sold within the Frovinces to which this Act applies and the provisions of the Treaty of mercial Treaty of the 2nd May, 1870, between the British Government and His

Highness the Maharaja Bahadur are complied with.

Bagginge in personal use to such rules as may be passed by '[the to be passed free. Government] from time to time, pass free of duty any baggage in actual use, and for this purpose may determine, subject to any such rules, whether any goods shall be treated as baggage in actual use or as goods subject to duty.

Reimported articles. Highness the Maharaja Bahadur be imported into any place in them from any foreign country, such goods shall be liable to all duties, conditions and restrictions (if any) to which goods of the like kind and value not so exported are liable on the first importation thereof: Provided that, if such importation takes place within one year after the exportation of such goods, and it is proved to the satisfaction of the "Inspector" of Customs and Excise that the property in such goods has continued in the person by whom or on whose account they were exported, they may be admitted without payment of duty.

323. No exemptions from duty will be allowed except

No exemption allowed under 'corders of the Government].

except under orders of the Government.

General procedure to be ports by post as may be exempted from duty under the last preceding section, the imports of goods exempted or, in the case of exemptions under section 19, such officer as His Highness the Maharaja Bahadur, the Resident or the head of the department concerned may duly authorize, will advise the Inspector of Customs and Excise before import of the particulars of the goods to be exempted, and obtain from him an exemption certificate, under cover of which they will be allowed to be imported free of interference.

'In Section 23 word "other" after "no" deleted vide Notification published in Government Gazette dated 11th Baisakh 1988.

Substituted by Act X of 1996.

^{&#}x27;In Section 22 words "exported" substituted for "manufactured or made" and word "Inspector" substituted for "Superintendent" vide State Council Resolution No, 17 dated 6th June, 1905 In Section 23 word 11 About 13th Bhadon 1962.

The exemption of personal baggage or postal parcels, will be covered by such rules as '[the Government] may from time to time enact.

CHAPTER V.

GENERAL PROVISIONS REGARDING IMPORT & EXPORT.

Power to prohibit or restrict importation or exportation.

In proportion of exportation or exportation of any specified description, or the import or export of specified goods by specified routes, or the import or export of any goods '[between sunset and sunrise] accross specified portions of the frontier of his territory.

³Explanation.—Goods include any newspapers or book

as defined in the Press and Publications Act.

Power to detain packages containing certain publications imported into Jammu and Kashmir state.

Customs Officer not below the rank of Assistant Power to detain package, and Inspector of Customs may detain any package, brought whether by land or air into the Jammu and Kashmir State which he suspects to contain;

(a) any newspaper or book defined in the Press and

Publications Act, No. 1 of 1989, or

(b) any document, containing any seditious matter, or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of His Highness the Maharaja Bahadur's subjects or which is deliberately and maliciously intended to outrage the religious feelings of any such class, by insulting the religion or the religious beliefs of that class that is to say, any matter, the publication of which is punishable under 'Sections 103, 120-B and 215-A of the Ranbir Dand Bidhi, and shall forward such package to the nearest Magistrate of the first class.

(2) Any officer detaining a package under the provisions of sub-section (1), shall where practicable forthwith send by post to the addressee or consignee of such package a notice of the fact of such detention.

(3) The Minister of the State empowered to act under the Press and Publications Act No. 1 of 1989, shall cause the con-

published in Government Gazette dated 17th Baisakh 1989.

4Sections 121-130, 153-A and 295-A Ranbir Penal Code,

^{*}In Section 25 words "between sunrise and sunset" deleted at the end of the Section and inserted after the words "any goods" by Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

*Expalnation to Section 25 and Sections 25-A, 25-B and 25-C added vide Act, IV of 1989

tents of such package to be examined, and if it appears to him that the package contains any such matter as is described in sub-section (I) may pass such orders as to the disposal of the package and its contents as he may deem proper, and if it does not so appear shall release the package and its contents unless the same be otherwise liable to seizure under any law for the time being in force:

Provided that any person interested in any package detained under the provisions of this section, may within two months from the date of such detention apply to the Minister of the State empowered under the Press and Publications Act No. 1 of 1989 for release of the same, and he shall consider such application and pass such orders thereon as he may deem pro-

per.

Provided further that if such application is rejected, the applicant may within two months from the date of the order rejecting the application apply to the High Court for release of the package or its contents on the grounds that the package did not contain any such newspapers, book or other document containing any such matter as is described in sub-section (1).

(4) In this section "document" includes also any painting

drawing or photograph or other visible representation.

Procedure for disposil by High Court of applications for release of packages so detained.

Procedure for disposil be sub-section (3) of Section 25-A shall be heard and determined in the manner provided by Sections 99-D to 99-F of the Code of Criminal Procedure of 1989.

25-C. No order passed or action taken under section 25-A shall be called in question in any court otherwise than in accordance with the

second proviso to sub-section (3) of that section.

26. When any goods capable of being easily identified, which have been imported into the terri-Power to grant draw. tories of His Highness back. the Bahadur and upon which duties of customs have been paid on importation are re-exported, the Minister-in-Charge of the Customs Department may sanction, subject to any rules which may be prescribed by him in this behalf, the repayment of such portion as seems good to him, not exceeding seven-eighths in each case, of the duties paid on import as drawback: Provided that in every such case the goods be identified to the satisfaction of the Superintendent of Customs and Excise; that the re-export be made within two years from the date of importation, as shown by the records of the Customs-house and that the claim to drawback is made at the time of re-export.

'In case of such goods, however, imported by post or rail-way parcel or as personal luggage, as are re-exported within a month of their import the Inspector Customs and Excise if the duty on the goods does not exceed Rs. 100 and the Inspector General of Customs and Excise in all other cases may exempt the import from duty, provided that the opening of of the parcel at the time of import and the re-packing of it on re-export are effected in the presence of the Inspector Customs and Excise or in the case of his absence by a Deputy Inspector.

Provided also, that if any portion of the goods imported is consumed within the State no exemption on re-export shall be permitted unless and until the duty due on the portion

consumed has been paid in full.

Cinematograph films imported temporarily as Railway or Postal Parcel or as personal suggage for use at the shows shall be liable to duty on the amount of hire paid for them if they are re-exported within one month of their import, provided that films of educative character i.e., those explanatory of any method relating to science, art, craft or industry shall be exempt if they are imported as Railway or Postal Parcels or as personal luggage and returned within one month of their date of import.

Films, imported for more than a month, of either class will, however, be subjected to full amount of duty at the rate in

force at the time of their import.

Power to establish [the Government] may permit the establish ware houses. Ishment of public warehouses for the deposit of dutiable goods prior to payment of duty, subject to such rules regarding the conduct of such warehouses and the levy of duty on goods deposited in or removed therfrom as he may, from time to time, see fit to enact.

28. [The Government] may also, from time to time, make

Power to make rules. rules governing-

(a) the levy of rent for goods detained or left through the owner's default at any Customs-house, warehouse, post or mahal;

Para two with proviso of Section 26 was substituted vide Notification pullished in Government G. zette dated 14th Maghar 1972. Powers of Inspector to substitute exemption were r. ised from the duty value of Rs. 5 to Rs. 50 (Vide Notification published in Government G. zette dated 11th Bandon 1988) and from Rs. 50 to Rs. 100 (Vide Notification No. 15 dated 3rd October, 1932, published in Government G. zette dated 28th Bhadon 1989) Inspector General of Custons and Excise is delegated powers to deal with all cases relating to refund of duty above Rs. 100 on goods re-exported from the State territory (Vide Notification No. 25, dated 26th June, 1930 published in Government G. zette dated 27th Har 1987). The following words have, therefore, been chaitted from Para two "the Inspector General of Customs and Excise if the duty exceeds Rs. 5 but does not exceed Rs. 100 °. (Editor).

**Buostituted for "His Highness the Maharaja Bahadur" viae Act X of 1996.

(b) the testing of spirit to ensure that it has been effectually and permanently rendered unfit for human consumption where such spirit is admitted at a special rate of duty; and

(c) generally to carry out the provisions of this Act.

CHAPTER VI.

OFFENCES AND PENALTIES.

Offences in respect of general imports.

29. Any person who—

 (a) imports or exports goods which are liable to duty on import or export without payment of the same,

(b) gives a false invoice in regard to goods imported or

exported,

(c) refuses to give an invoice or to produce documents or give information in his possession as required by section 9,

(d) imports or exports goods the import or export of

which is prohibited under section 25,

(e) conceals any prohibited or dutiable goods in his baggage, or

(f) breaks any rule framed under this Act,

- i[(g) attempts or abets the commission of offences detailed in clauses (a), (d) and (e) or abets in clause (b)] shall be liable to fine, which may amount to three times the duty on the goods, if any, in respect of which his offence has been committed, or five hundred rupees, whichever is greater, and the goods in respect of which his offence has been committed shall be liable to confiscation.
- Offences in respect of a port in British India to the territories of bonded goods. of His Highness the Maharaja Bahadur or from the frontier of the State to Srinagar, or who is carrying such goods in bond through the territories of His Highness the Mahara a Bahadur to Central Asia, and who breaks bulk of the goods before they reach their destination, or tampers with the seals or marks put upon them by the British or State Customs officials, as the case may be, shall be liable to a fine which may amount to five hundred rupees.

31. If any person intentionally obstructs any Customs
Obstruction of Customs and Excise Officer, or any other person
duly employed in the prevention of smuggling, in the exercise of any powers given under this Act to

¹⁰¹ use (g) added vide Chief Minister's letter No. 7682/P. 3. 17, dated 29th January 1917 published in Government Gazette dated 26th Har 1974.

any such officer or person, he shall be liable to imprisonment not exceeding six months, or to fine not exceeding one thousand rupoes, or to both

sand rupees, or to both.

Connivence at fraud or breach of duty by Oustoms and Excise Officer.

Customs revenue or abets or connives at any such fraud or any attempt to practise any such fraud, or if any such officer or person is guilty of a wilful breach of the conditions of this Act, he shall be liable to imprisonment for any term not exceeding two years, or to fine not exceeding one thousand rupees, or to both.

This punishment shall be in addition to any departmental punishment, such as, dismissal from service or confiscation of security which the Inspector General of Customs and Excise may order. Appeal against such orders of departmental punishment shall lie to the Minister-in-charge whose orders shall be final.

If any Customs and Excise Officer, or other person duly employed as such, requires any per-Search on insufficient grounds or disclosure of son or premises to be searched for dutiable particulars learnt officialor prohibited goods, or requires any perly by Customs and Excise son to be detained without having reason-Officers. able ground to believe that there are dutiable or prohibited goods concealed about such person or premises, and if any such officer or person, except in the discharge of his duty in good faith, discloses any particulars learnt by him in his official capacity, or if any Customs and Excise Officer, except as permitted by the Act, parts with the possession of any samples delivered to him in his official capacity, such officer or person shall be liable to a penalty not exceeding five hundred rupees.

Offences not otherwise in contravention of any of the provisions of this Act and not otherwise provided for in this Act, or of any rule or order made under this Act and not otherwise provided for in this Act, shall be liable to be punished for each such wilful act or omission with

fine which may extend to two hundred rupees.

35. The offences described in section 29 and 30 shall offences by whom punbe punishable by the Inspector of Customs and Excise, and those described in section 31, 32, 33 and 34 by the Magistrate of the first class within whose jurisdiction, respectively, they are committed:

Provided that when the offenders are European British subjects, or are liable under the provisions of the Commercial

Treaty of the 2nd May, 1870, between the British Government and His Highness the Maharaja Bahadur of Jammu and Kashmir Government, to the jurisdiction of the Joint Commissioners appointed thereunder, the Customs and Excise Officers of the State shall not exercise their power under the Act but shall make a report on the offence committed to the Resident in Kashmir, or to the Joint Commissioner, as the case may be, for disposal.

Procedure in enquiries under this Chapter, Inspectors of Customs and Excise shall be guided, so far as is practicable, by the provisions of the law governing the Criminal Procedure of the Government, and all decisions given and sentences imposed by them shall be appealable to the Inspector General of Customs and Excise [an appeal against whose orders shall lie to 2"the Government...]

CHAPTER VII.

PROCEDURE RELATING TO OFFENCES.

37. Any Customs and Excise Officer duly employed in Power to search on reather the prevention of smuggling may search any person who is crossing the frontier of His Highness the Maharaja Bahadur's territory, or who has recently crossed it:

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his

person:

Provided, also, that a female shall not be searched by any but a female.

Power to stop carts, etc., or other person duly employed for the preand search for goods on vention of smuggling may stop and search for smuggled goods any cart or pack animal or other means of conveyance: Provided that he has reason to believe that smuggled goods are carried thereby.

Powers to issue search plication by a Customs and Excise Officer stating his belief that smuggled or prohibited goods are secreted in any place within the local limits of his jurisdiction, issue a warrant to search for such goods. Such warrant shall be executed in the same way and shall

^{&#}x27;In Section 36 words in [] :dded vide order published in Government Gazette dated 18th Sawan 1961.

'In Section 36 "Government" substituted for "Minister-in-charge" and last sentence was deleted by, Act X of 1996.

have the same effect as a search warrant issued under the law relating to Criminal Procedure.

Any person against whom a reasonable suspicion exists that he has been guilty of an offence Persons reasonably suspected may be arrested. under this Act may be arrested by any Customs and Excise Officer, or other person duly employed for the prevention of smuggling.

41. Every person arrested on the ground that he has been guilty of an offence under this Act, Persons arrested to be shall forthwith be taken before the nearest taken to nearest Magis. trate or Inspector of Ous-Magistrate or Inspector of Customs and toms and Excise. Excise.

42. When any such person is taken before a Magistrate or Inspector of Customs and Excise, he Persons taken before Magistrates or Inspectors shall be released on giving security to the of Customs and Excise satisfaction of the officer before whom he may be detained or admitted to bail. he is taken to appear at such time and place as such officer may appoint.

If any person liable to be arrested under this Act, is not arrested at the time of committing Persons escaping may be afterwards arrested. the offence for which he is so liable, after arrest makes his escape, he may at any time afterwards be arrested and taken before a Magistrate or Inspector of Customs and Excise to be dealt with as if he had been arrested at the time of committing such offence.

44. Anything liable to confiscation under this Act may be seized by any Customs and Excise Officer Seisure of things liable to confiscation. or other person duly employed for the pre-

vention of smuggling.

45. All things seized on the ground that they are liable to confiscation under this Act shall, as soon Things seized how to be dealt with. as conveniently may be, be deposited in such custody as the Inspector General of Customs and Excise may, from time to time, appoint for the purpose.

46. Whenever confiscation is authorized by this Act Option to pay fine in the officer adjudging it shall give the owner lieu of confiscation. of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit. Should the owner fail to exercise such option, the property in the goods will vest in His Highness the Maharaja Bahadur.

47. When any fine, penalty or increased rate of duty is leviable under this Act, the goods in res-Goods on which penalty pect of which such fine, penalty or rate is is incurred not to be removed till payment. leviable shall not be removed by the owner

until such fine, penalty or rate is paid.

If any person has become liable to any such fine, penalty or rate in respect of any goods, Other goods of persons the Inspector of Customs and Excise may liable to fine or penalty detain any other goods belonging to such may be detained. person passing any Customs post until such fine, penalty or

rate is paid.

48. When a penalty or increased rate of duty is adjudged against any person under this Act by any Enforcement of payment Customs and Excise Officer, such officer of penalty. if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any Custom and Excise Officer. When a Customs and Excise Officer who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered, and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself.

49. Where any appeal is laid in respect of any duty or Deposit pending appeal penalty adjudged under this Act, the of duty demanded. owner shall, pending the appeal, deposit in the hands of the Inspector of Customs and Excise for the province in which the dispute arises the amount adjudged by the

order appealed against.

When delivery of any goods is withheld merely by reason of such amount not having been paid, the Inspector of Customs and Excise shall, upon such deposit being made, cause such

goods to be delivered to the owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Inspector of Customs and Excise shall return such amount or portion, as the case may be, to the owner of such goods on demand by such owner.

50. The award of any confiscation, penalty or increased rate of duty under this Act shall not pre-Penalty under Act not to interfere with punishvent the infliction of any punishment to ment under other law. which the person affected thereby is liable

under any other law.

CHAPTER VIII.

MISCELLANEOUS.

All person in Government bound to report offences against the Act.

All person in Government bound to report offences against the Act.

Service bound to report of any of the provisions of this Act which may come to his knowledge; and all such officers and all village headmen and chaukidars shall be bound to take all reasonable measures in their power to prevent the commission of any such breaches which they may know or have reason to believe are about or likely to be committed.

Power to frame rules for rewards by the Inspector General of Custection of offence.

The Government may frame rules for the grant of rewards by the Inspector General of Custems and Excise to Customs and Excise Officers or other persons who have been this Act.

- No compensation for loss or injury except on proof of neglect or wilful act.

 No compensation for any Customs and Excise Officer compensation for any loss or damage occurring to such goods at any time while they remain or are lawfully detained at any custom-house, post or mahal or under charge of any Customs and Excise Officer, unless it be proved that such loss or damage was occasioned by the neglect or wilful act of such Customs and Excise Officer.
- Notice of proceeding.

 Notice of proceeding.

 any person for any thing purporting to be done in pursuance of this Act, except after a month's previous notice in writing of the intended proceeding and of the cause thereof has been given to such person, nor after the expiration of three months from the accrual of such cause.
- Agent to produce authorical cise Officer for permission to transact any business with him on behalf of any other person such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted, and in default of production of such authority may refuse such permission.

The clerk, servant or agent of any person or mercantile firm may transact business generally at the custom-house on

behalf of such person or firm, provided that the Inspector of Customs and Excise may refuse to recognize such clerk, servant or agent unless such person or a member of such firm identify such clerk, servant or agent to the Inspector of Customs and Excise as empowered to transact such business, and deposit with the Inspector of Customs and Excise an authority, in writing duly signed, authorizing such clerk, servant or agent to transact such business on behalf of such person or firm.

Tammu and Kashmir Government Gazette', and shall thereupon have the force of law. And any notification made by any authority under powers conferred by this Act may be concelled in like manner

by the same authority.

THE EXCISE ACT, 1958.

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THE JAMMU AND KASHMIR EXCISE ACT, 1958.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 9, dated 4th December 1901.)

An Act to consolidate and amend the Excise Law of the Jammu and Kashmir Government.

Whereas it is expedient to consolidate and amend the law relating to the import, export, transport, manufacture, sale and possession of intoxicating 'liquor and intoxicating

'The word or words "opium," "opium or" and "opium and", according as it may be grammatically appropriate in each case shall be deleted in the preamble and wherever they occur in the following sections and sub-sections, namely:—

3 (1), 3 (14), 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 25, 26, 28, 30, 35, 47, 49, 50, 57 and 58 but the word "opium" where it first occurs in the provise of section 11 shall not be deleted. Vide Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

drugs in the Jammu and Kashmir Government; it is enacted as follows:—

I.—PRELIMINARY AND DEFINITIONS.

1. This Act may be cited as "The Jammu and Kashmir Excise Act, 1958".

It extends to the whole of the territories of His Highness the Maharaja Bahadur of Jammu and Kashmir Government; and

It shall come into force in any local area within the said territories to such extent and from such date as '[the Government] by notification, shall direct.

2. From the date on which this Act comes into force in any local area, the enactments, rules and Regulations. Regulations governing the Excise revenue at present in force shall be repealed;

Provided that all licences granted under any of the said enactments, rules and Regulations in force on the date on which this Act comes into force in any local area, shall continue in force for the periods for which the same have been respectively granted, subject to the provisions of the enactments, rules and Regulations under which such licences were granted:

Provided, further, that the said repeal shall not affect any act done or any offence committed, or any proceeding commenced, or any claim which has arisen, or any penalty which has been incurred before this Act comes into force.

3. In this Act, unless there be something repugnant in the subject or context,—

(I) "Excise revenue" means revenue derived or derivable from any duty, fee, tax, fine or confiscation imposed or ordered under the
provisions of this Act or of any other law for the time being
in force relating to liquor or intoxicating drugs.

(2) "Customs and Excise Officer" means the Inspector General of Customs and Excise or Inspector tor of Customs and Excise or any officer above the rank of Chaprasi, or other person lawfully appointed or invested with powers under the Jammu and Kashmir Customs Act of 1958.

In Sections 1 (para third), 3 (sub-sections 7 and 9), 4, 5 (proviso), 7, 8, 10 (d), 11, 12, 13, 15, 16, 17 (e), 18, 20 (d), 25, 63 (b), 63 (c), 63 (d) and 64 for the words "His Highness the Maharaja Bahadur" the words "the Government" substituted vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

(3) "Spirits" means any liquor containing alcohol and obtained by distillation. "Spirits".

(4) "Liquor" includes spirits of wine, methylated spirits, spirits, wine, beer and all liquid consist-"Liqour.". ing of or containing alcohol.

(5) "Beer" includes ale, stout, porter, cider and all other fermented liquors usually made from malt.

"Beer".

(6) "Country liquor" means liquor, whether manufactured in the State or not, on which duty of "Country liquors" Excise has not been levied, and is not leviable under this Act at the full rates of duty chargeable under the Customs Tariff.

(7) "Foreign liquor" includes all liquors except country

liquor: "Foreign liquors".

> Provided, that in any case in which doubt may arise, the [Government] may declare by notification what, for the purposes of this Act, shall be deemed to be "country liquor" and what "foreign liquor".

2(8) [(a) "Raw Opium" means the spontaneous coagulated juice obtained from the capsules of the papaver somniferum, which has only been submitted to the necessary manipulations for packing and transport and also includes poppy heads.

"Poppy heads" means capsules of the poppy plant from

which the juice has not been completely extracted.

(b) "Prepared Opium" means the product of raw opium, obtained by a series of special operations such as dissolving, boiling, roasting and fermentation designed to transform it into an extract suitable for smoking and includes madak and chandu and also dross and all other residues remaining when opium has been smoked.

(c) "Medicinal Opium" means raw opium which has been heated to 60 centigrade and contains not less than 10 per cent. of morphine, whether or not it be powdered or granulated or mixed with indifferent materials and includes preparations and derivatives of the foregoing not being morphine

or heroine.

(d) "Morphine" means the principal alkaloid of opium, having the chemical formula C₁₇H₁₉No₃ and includes

(i) all new derivatives of morphine or of its salts and every alkaloid or opium which may be shown by

See footnote under section 1. Sub-section (8) substituted vide Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

scientific research, generally recognised, to be liable to similar

abuse and productive of like ill-effects;

(ii) all preparations (official or non-official including the so-called anti-opium remedies) containing morphine or such derivatives or alkaloids as above.

(e) "Heroine" means diactyl-morphine having the chemical formula C₂₁ H₂₃ No₅ and includes its salts and all

preparations containing heroine.

(f) "Cocaine" means the principal alkaloid of Erythroxylon Coca having the chemical formula C17 H21 No4 and includes

(i) all parts of the Coca plant,

(ii) all new derivatives of cocaine or of its salts which may be shown by scientific research, generally recognised to be liable to similar abuse and pro-

ductive of like ill-effects;

(iii) eucaine and every other preparation, synthetic or otherwise, which has a physiological effect similar to that of cocaine or which is declared by the Government to be included in the meaning of the term cocaine;

(iv) all preparations (official or non-official including the so-called anti-opium remedies) containing cocaine or eucaine or such derivatives, salts or prepara-

tions as above.

(g) "Admixture of Opium" means preparations, admixtures or derivatives of raw opium not being prepared opium, medicinal opium, morphine or heroine.

(h) "Excise opium" is raw opium (excluding poppy

heads) issued by the Excise Department to its licensees.

(i) "Opium" includes raw opium, excise opium and ad-

mixtures of opium.]

1(9) ["Intoxicating drug" includes charas, ganja, bhang and every other preparation and admix-"Intoxicating drug". ture of the same, and every intoxicating drink or substance prepared from any part of the hemp plant, from grain or from other material, not included in the term "liquor". It also includes opium, prepared opium, medicinal opium, morphine, heroine and cocaine and every drug or article which 2[the Government] may, by notification in the Government Gazette, declare to be included in this definition and every preparation and admixture of any such drug or article.

^{*}Sub-section (9) as amended by amending Regulation of 1970 substituted vide Notification No. 14 published in Government Gazette dated 17th Phagan 1983. See footnote under section 1.

"Dangerous drug" includes medicinal opium, morphine, hero ne and cocaine.

(10) "Sale or selling" includes any transfer otherwise than

"Sale or selling". by way of gift.

'[(10-A) Liquor and intoxicating drugs other than prepared opium and dangerous drugs shall be deemed to be sold "by retail" when sold in quantities not exceeding the quantity (if any) fixed in respect of the same by rules made under this Act as the largest which may be possessed by one person, at one time, without a licence, permit or pass; and "by wholesale" when sold in quantities larger than the above.]

(II) "Import" means to bring into the State territory from British India or foreign territory.

"Import."

- (12) "Export" means to take out of the State territory to British India or foreign territory.
- (13) "Transport" means to move from one place to another within the State territory.
- "Manufacture." includes every process, whether natural or artificial by which any fermented, spirituous or intoxicating liquor, or intoxicating drug is produced or prepared, and also redistillation and every process for the rectification of liquor.

(15)"Rectification" includes every process whereby spirits are purified or are coloured or flavoured by

mixing any material therewith.

(16) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the 1st class or any Magistrate of the 2nd class specially authorized in this behalf by the High Court of the State.

²[(17) "Imprisonment" includes both simple and rigor-"Imprisonment." ous.]

II.—ESTABLISHMENT AND CONTROL.

4. The provisions of the Jammu and Kashmir Customs Act of 1958 in regard to the appointment, removal or punishment of officers appointed for the collection and control of the

¹Sub-section (10-A) inserted vide Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

²Chause (17) added vide Council Resolution dated 27th November, 1903 published in Government Gazette dated 18th Phagan 1960.

Customs and Excise revenue and for the delegation of powers and framing of rules in this respect by '[the Government] and the '[Inspector General] of Customs and Excise, respectively, shall apply mutatis mutandis, to this Act.

III.—IMPORT, EXPORT AND TRANSPORT.

less, being liable to the payment of duty under the Jammu and Kashmir Customs Act of 1958, or any other law for the time being in force relating to the duties of customs on goods imported into the Jammu and Kashmir State, it has been dealt with according to such law:

Provided that '[the Government] may exempt any imports of liquor, opium or intoxicating drugs made on State account from import duties with a view to their taxation under this

Act.

6. No liquor or intoxicating drug shall be exported unless it has been lawfully imported or manufactured in the State, and its export is permitted by competent authority on payment of the fee or duty, if any, to which it is liable under any law for the time being in force.

Every package of opium intended for export and containing more than five seers of raw opium shall before export be conspicuously and indelibly marked with the word "Opium" and with the net weight of raw opium contained in it, express-

ed in maunds and seers.

7. [The Government] may from time to time, by notiTransport of liquor, fication in the Government Gazette, proopium or intoxicating hibit the transport of liquo, or intoxicating drugs from any local area into any
other local area.

8. No liquor or intoxicating daug exceeding such quantity as '[the Government] may from time to time prescribe by notification, either generally for the whole State or for any local area, shall be transported, except it be accompanied by a permit issued under the provisions of the next following section:

Provided that in the case of foreign liquor transported for bona jide private consumption or for sale at any place

1 See footnote under section 1.
21 Inspector General' substituted for "Superintendent" wherever it occurs vide notification published in Government Gazette dated 10th Sawan 1986.

Para to section 6, added vide Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

at which the sale of such liquor is duly licensed or permitted under the provisions of this Act, such permits shall be dispensed with, unless '[the Government] shall by notification otherwise direct with respect to any local area.

9. Permits for the transport of liquor or intoxicating drugs may be issued by the Inspector General of Customs and Excise or by any

person duly empowered in that behall by him.

Such permits shall be either general for definite periods

General and special and kinds of liquor or intoxicating drugs,

or special for specified occasions and parti
cular consignments only.

Particulars to be given 10. Each permit shall specify:—

in permits.

(a) the name of the person authorized to tran port liquor or intoxicating drugs,

(b) the period for which the permit is to be in force,

(c) the quantity and description of liquor or intoxicating drugs for which it is granted,

(d) any other particulars which '[the Government]

may prescribe.

General permits shall be granted only to persons licensed under this Act and shall cover any quantity of liquor or intoxicating drugs transported at any one time within the quantity specified in the permit.

Permits shall extend to and include servants and other persons employed by the grantees and acting in their behalf.

IV.—MANUFACTURE, POSSESSION AND SALE.

11. No liquor, or intoxicating drug shall be manufac-

Manufacture of liquor, or intoxicating drug prohibited except under the provision of this Act.

no hemp ²[or coca] or poppy plant shall be cultivated; ²[nor shall the spontaneous growth of the hemp plant be collected;]

no distillery, or brewery, or other place for the manufacture of liquor of any kind shall be constructed or worked; and no person shall use, keep or have in his possession any material, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any liquor, or intoxicating drug except under the authority and subject to the terms and conditions of a licence granted by the Inspector General of Customs and Excise in that behalf:

See footnote under section 1.
Words in brackets in section 11 inserted vide Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

Provided that '[the Government] may by notification direct that in any local area it shall not be necessary to take out a licence for the manufacture of liquor for bona jide home consumption or for the growth of the poppy or hemp plant or the the manufacture of opium for sale to vendors licensed for the sale, manufacture or export of intoxicating drugs:

Provided also that it shall be competent to '[the Government] at any time to restrict or prohibit the manufacture, possession or sale of any kind of liquor or intoxicating drugs in any local area of the territories of the Jammu and Kashmir

Government,

- ²12. [No person shall possess any quantity of liquor or of any intoxicating drug in excess of such quantity (if any) as the '[Government] may from time to time prescribe by notification unless he is licensed by the Inspector General of Customs and Excise to collect, cultivate, manufacture or sell the same or holds a pass from the Inspector General of Customs and Excise in that behalf.]
- 13. The Inspector General of the Customs and Excise Establishment of public may, with the previous sanction of '[the distilleries and ware-Government,]
- (a) establish a public distillery in which liquor or any kind of liquor may be manufactured on such conditions as '[the Government] deems fit to impose;

(b) discontinue any public distillery so established;

(c) establish a public warehouse wherein liquor and intoxicating drugs may be deposited and kept without payment of duty; and

(d) d.scontinue any public warehouse so established.

Sale of liquor or intoxicating drugs shall be sold without a licence from the Inspector General of Customs and Excise: Provided that a cultivator or owner of any hemp plant may sell without a licence those portions of the plant from which the intoxicating drug is manufactured or produced to any person licensed under this Act to sell, manufacture or export intoxicating drugs.

15. It shall be lawful for '[the Government] to grant to any person or persons, on such conditions and for such period as may seem fit, the

exclusive or other privilege,

¹See footnote under section 1.

²Section 12 as amended by Amending Regulation of 1970 substituted vide Notification No. 14

published in Government Gazette dated 17th Phagan 1983.

"In section 14 words "or poppy" omitted vide Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

(1) of manufacturing or supplying by wholesale, or

(2) of selling by retail, or

(3) of manufacturing or supplying by wholesale and selling by retail any country liquor or intoxicating drug within any local area.

No grantee of any privilege under this section shall exercise the same until he has received a licence in that behalf from

the Inspector General of Customs and Excise.

V.—Duties.

16. A duty shall, if '[the Government] so direct, be levied on all liquor and intoxicating drugs manu-Duty on liquor or in-toxicating drugs. factured in the territories of His Highness the Maharaja Bahadur or imported into the same on State account, of such amount as the Government may from time to time prescribe:

Provided that it shall be lawful for '[the Government] to exempt any liquor or intoxicating drug from any duty to which the same may be liable under any of the provisions of this Act.

17. Such duty may be levied in one or more of the follow-How duty may be ing ways:imposed.

(a) by duty of Excise to be charged, in the case of spirits or beer, either on the quantity produced in the distillery or brewery or passed out of the distillery, brewery or warehouse, as the case may be;

(b) in the case of intoxicating drugs, by a duty to be rateably charged on the quantity produced or manufactured or passed out of the warehouse or on the acreage cultivated;

(c) by payment of a sum in consideration of the grant

of any exclusive or other privilege-

(1) of manufacturing or supplying by wholesale, or

(2) of selling by retail, or

(3) of manufacturing or supplying by wholesale, and selling by retail any country liquor or intoxicating drug in any local area and for any specified period of time;

(d) by fees on licences for manufacture or sale;

(e) by transport duties assessed in such manner as

'[the Government] may direct.

18. All or any of the duties leviable under this Act in any local area may, with the sanction of '[the Government], be farmed sub-Duties may be farmed. jec to such payment and on such other conditions as '[the Gov-

¹ See foot noteunder section 1.

ernment] shall prescribe. Farmers of duties under this section shall take out licences as such from the Inspector General of Customs and Excise.

Farmer may let or contrary, any grantee of any exclusive or other privilege may let or assign the whole or any portion of the privilege or farm. But no such lessee or assignee shall exercise any rights as such unless and until the grantee or farmer, as the case may be, shall have applied to the Inspector General of Customs and Excise for a licence to be given to such lessee or assignee, and such lessee or assignee shall have recieved the same.

VI.—LICENCES, ETC.

- 20. Every licence or permit granted under this Act shall Forms and conditions of be granted—
 licences, etc.
 - (a) on payment of such fees (if any),

(b) for such period,

(c) subject to such restrictions and on such conditions,

(d) shall be in such form and contain such particulars as '[the Government] may direct, either generally or in any particular instance, in this behalf.

Counterpart agreements may be required to execute a counterpart to be executed by licensees. agreement in conformity with the tenor of his licence and to give such security for the performance of his agreement as the Inspector General of Customs and Excise may require.

22. The Inspector General of Customs and Excise may cancel or suspend any licence or permit

Power to recall licences. granted under this Act-

(a) if any fee or duty payable by the holder thereof be

(b) in the event of any breach by the holder of such licence or permit, or by his servants, or by any one acting with his express or implied permission on his behalf, of any of the terms or conditions of such licence or permit; or

(c) if the holder thereof is convicted of any offence against this Act or any other law for the time being in force relating to the Excise revenue, or of any cognizable or non-bailable offence; or

(d) where a licence or permit has been granted on the application of the holder of an exclusive or other privilage, or of a farmer of duties under this Act, on the requisition in writing of such person; or

(e) if the conditions of the licence or permit provide for

such cancelment or suspension at will.

VII.—GENERAL PROVISIONS.

23. Every person who manufactures liquor or sells counconsisted to keep instruments for testing etc.

Ty liquor under a license granted under this Act shall be bound—

**The country of the country of

(a) to supply himself with such of the prescribed instruments for testing the strength of such liquor as the Inspector General of Customs and Excise Revenue may direct

and to keep the same in good condition, and,

(b) on the requisition of any officer of the Customs and Excise Department duly empowered in that behalf, at any time to measure out or to test the strength of any such liquor in his possession in such manner as the said officer may require.

- 24. All duties, taxes, fines and fees payable to the State direct under any of the foregoing provisions Recovery of duties, etc. of this Act or of any licence or permit issued under it, and all amounts due to the State by any grantee of a privilege, or by any farmer under this Act, or by any person on account of any contract relating to the Excise revenue, may be recovered from the person primarily liable to pay the same or from his surety (if any), as if they were arrears of land revenue, and, in case of default made by a grantee of a privilege or by a farmer, the Inspector General of Customs and Excise '[with the approval of the Government] may take the grant or farm under management at the risk of the defaulter, or may declare the grant or farm for eited and resell it at the risk and loss of the defaulter. When a grant or farm is under management under this section, the Inspector General of Customs and Excise may recover any monies due to the defaulter by any lessee or assignee as if they were arrears of land revenue.
 - 25. ²[The Government] may from time to time frame Powers to frame rules. rules—

[&]quot;Words in brackets inserted in section 24 vide Notification No. 15 dated 14th December 1922 published in Government Gazette dated 11th Poh 1979, but in these words "Government" substituted for "Minister-in-charge" by Act X of 1996, published in Government Gazette dated 15th Bhadon 1996.

² See footnote under section 1.

(a) for determining the number of licences of each des-

cription to be granted in any district or place;

(b) for regulating the number, size and description of stills, utensils, implements and apparatus to be used in any distillery;

(c) prescribing the instruments to be used in the testing of liquor and the tables of corrections according to tempera-

ture to be used therewith;

(d) prescribing the measures 30 be used for the sale of

country liquor:

- (e) fixing for any local area the "maximum or" minimum price [above or] below which any country liquor shall not be sold;
- (f) for the warehousing of liquor and intoxicating drugs and for the removal of the same from any warehouse in which they are deposited for deposit in any other warehouse or for local consumption or for export;

(g) for the inspection and supervision of stills, distil-

leries, private warehouses and breweries;

(h) for the management of any public distillery or pub-

lic warehouse established under section 13;

(i) for placing the growth of the poppy or hemp plant and the preparation of intoxicating drugs and the storage, import, export, possession or transport of liquor or intoxicating drugs under such supervision and control as may be deemed necessary for the purpose of this Act;

(j) prohibiting the use of any article which 2[the Government] shall deem to be noxious or otherwise objectionable in

the manufacture of liquor or any intoxicating drugs;

(k) for the grant of batta to witnesses summoned before Magistrate or Inspector of Customs and Excise under this Act;

(1) regulating the powers of the officers of the Customs

and Excise Department to summon witnesses;

(m) for the disposal of the articles confiscated and of

the proceeds thereof;

(n) for the grant of rewards to Customs and Excise Officers and other persons who have assisted in the detection or conviction of offences against this Act;

(o) generally to carry out the provisions of this Act or of any other law for the time being in force and relating to the

Excise revenue.

Words in brackets inserted vide order published in Government Gazette dated 10th Jeth 1978.

VIII .- POWERS AND DUTIES OF OFFICERS, ETC.

Magistrate or Inspector cise, upon information given by an officer of Customs and Excise of the Customs and Excise Department, or by a Police Officer or other person, and after such inquiry as he thinks necessary, has reason to believe that an offence under this Act has been committed and that the issue of a warrant is necessary to assist in its detection, he may issue a warrant for the search for any liquor, or intoxicating drug, materials, still, utensil, implement or apparatus in respect of which the alleged offence has been committed.

27. When the Wazir Wazarat of any district to which Powers to certain officers this Act applies, or any officer of the Customs and Excise Department not below the to search houses, etc., without warrant. rank of Assistant Inspector, has reason to believe that an offence under this Act has been committed, and that if steps are taken to obtain a search warrant under the last preceding section, it is likely to go undetected, he may, after recording his reasons and the grounds of his belief, at any time by day or night, enter and search any place and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act and may detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of any offence under this Act.

Power to enter and in. not lower than that of a Tehsildar] or any officer of the Customs and Excise Department not below the rank of Assistant Inspector, may enter and inspect, at any time by day or by night, any place in which any licensed manufacturer carries on the manufacture of any liquor or intoxicating drugs or stores any liquor or intoxicating drug; and may enter and inspect, at any time during which the same may be open, any place in which any liquor or intoxicating drug is kept for sale by any licensed person, and may examine, test, measure or weigh any materials, stills, utensils, implements, apparatus, liquor or intoxicating

29. If any officer empowered to make any entry under the provisions of the last two preceding sections, entry may be made by tions cannot otherwise make such entry, it shall be awful for him to break open any

outer or inner door or window and to remove any other obstacle to his entry into any such place.

^{&#}x27;Words in brackets in section 28 substituted for "the Wazir Wazarat of any district" wide Notification published in Govennment Gazette dated 26th Phagan 1976.

130. Any Customs and Excise Officer, any Police Officer

Offenders may be arrested, and contraband liquor and articles seized, without warrant. not below the rank of Sub-Inspector and any other person duly empowered by the Government in this behalf may arrest without warrant any person found committing

an offence punishable under section 48 or section 50 and may seize and detain any liquor, drug or other article which he has reason to believe to be liable to confiscation under this Act or any other such law and may detain and search any pe son upon whom, and any vessel, raft, boat, vehicle, animal, package, receptacle or covering in or upon which, he may have reasonable cause to suspect any such liquor or drug or other such article to be or to be concealed.

Arrest of persons refus. pected of committing an offence under this ing to give name or giving Act, and who on demand of Cus oms and Excise Officer or of any other person duly empowered, refuses to give his name or residence, or who gives a name or residence which such officer or person ha reason to believe to be false, may be arrested by such officer or person in order that his name and residence may be ascertained.

32. All searches under the provisions of this Act shall be made in accordance with the provisions of the law relating to Criminal Procedure for

the time being in force in the State.

Officers of Police and Revenue Departments and all village headmen and Chaukidars shall be legally bound to assist any Customs and Chaukidars bound to assist.

Sometiments and all village headmen and Chaukidars shall be legally bound to assist any Customs and Excise Officer in carrying out the provisions of this Act.

Customs and Excise Officer, shall be bound to give immediate information to a Customs and Excise Officer, and every Customs and Excise Officer shall be bound to give immediate information either to his immediate

to give immediate information either to his immediate official superior or to an Inspector of Customs and Excise of all breaches of any of the provisions of this Act which may come to his knowledge; and all such officers shall be bound to take all reasonable measure in their power to prevent the commission of any such breaches which they may know or have reason to believe are about or likely to be committed.

Land-holders and others and cultivators who own or hold land on which there shall be manufacture of liquor, growth of the poppy or hemp plant or manufacture oi intoxi-

1Section 30 substituted vide Act No. VIII of 1997 published in the Government Gazette dated 29th Har 1997.

cating drugs not licensed under this Act or in accordance with its conditions shall, in the absence of reasonable excuse, be bound to give notice of the same to a Magistrate or to a Customs and Excise Officer immediately the same shall have come

to their knowledge.

(1) When any person is arrested under the provisions of this Act, the person arresting him shall, if he is able to furnish security, admit be dealt with. him to bail to appear before the nearest Inspector of Customs and Excise, or, if he is unable to furnish security, forward him in custody to the Magistrate or Officer in charge of a Police Station, whichever be the nearest within the local limits of whose jurisdiction the offence with which he is charg d, is suspected to have been committed.

(2) On any such person being brought to the Magistrate or Officer in charge of a Police Station as aforesaid, such Magistrate or Officer in charge of a Police Station shall admit him to bail to appear, when summoned, before the nearest Inspector of Customs and Excise, or in default of bail shall forward

him in custody to such Inspector.

(3) On any such person being brought in custody before such Inspector of Customs and Excise as aforesaid or appearing before him on bail, such Inspector shall hold such enquiry as he may think necessary and shall either release such person or forward him in custody or admit him to bail to appear before the Magistrate having jurisdiction to try the case.

It shall be the duty of any officer arresting any per-Persons arrested may be son under the powers given by this Act, released on bail. and of any Magistrate or Officer in charge of a Police Station before whom a person arrested is brought or appears under the provisions of section 36 of this Act, to release such person on bail, if sufficient bail be tendered for his appearance before an Inspector of Customs and Excise or be-

fore a Magistrate.

38. Before any person is released on bail, a bond in such sufficient but not excessive sum of money Bond to be executed before releasing on bail. as the officer admitting him to bail thinks proper, shall be executed by such person and by one or more sureties, conditioned that such person shall attend in accordance with the terms of the bond and shall continue to attend until otherwise directed by the Inspector of Customs and Excise before whom he was bailed to attend or by the Magistrate, as the case may be:

Provided that the officer admitting any such person to bail may, at his discretion, dispense with the requirement of of a surety or sureties to the bond executed by such person.

39. Any Inspector of Customs and Excise holding an enquiry in the manner provided in section Inspector of Customs 36 may summon any person to appear and Excise may summon witness. before himself to give evidence on such enquiry or to produce any document relevant thereto which may be in his possession or under his control.

Persons so summoned shall attend as required, and shall be bound to answer truly, all ques-Procedure in taking evitions relating to such enquiry put to them dence. by such Inspector. Such answers shall be reduced into writing, and shall, after being read over to the person making the same and admitted by him to be correct, be signed by such

Inspector.

It shall be lawful for an Inspector of Customs and 41. Excise, instead of summoning to appear Procedure to be followed before him any person who from sickness in case the witness is unable to appear before an or other infirmity may be unable to do so, Inspector of Customs and or whom by reason of rank or sex it may Excise. not be proper to summon, to proceed to the residence of such person and there to require him to answer such questions as he may consider necessary with respect to such enquiry; and such person shall be bound to answer truly all such questions put to him, and the provisions of section 40 shall apply to such answer.

An Inspector of Customs and Excise may, after recording his reasons in writing, summon Inspectors of Customs any persons to appear before him whom he and Excise may summon has good reason to suspect of having compersons suspected of offences against Excise law. mitted an offence under this Act. On such person appearing before such Inspector the procedure

prescribed by sections 36 to 41 inclusive, of this Act shall become applicable.

43. The law for the time being in force as to summonses and compelling the attendance of person Law relating to Crimisummoned in Criminal Courts shall, so far nal Courts as to summonas the same may be applicable, apply to ing of witness to apply. any summons issued by an Inspector of Customs and Excise and to any person summoned by him to appear under the provisions of this Act.

144. When an Inspector of Customs and Excise forwards in custody any person accused of an offence under this Act to the Magistrate having Inspector to forward a report with the offender to jurisdiction to try the case, or admits any a Magistrate. such person to bail to appear before such Magistrate, such Inspector shall either direct any of his subordinates to lodge

a complaint or forward to such Magistrate a report setting forth the name of the accused person and the nature of the offence with which he is charged and the names of the persons who appear to be acquainted with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. In the latter case the examination of the Inspector shall not be compulsory but in the discretion of the trial Magistrate. Upon receipt of such report the Magistrate shall inquire into such offence and try the person accused thereof in like manner, as if the complaint had been made before him as prescribed in the Code of Criminal Procedure.

45. No person accused or suspected of having committed an offence under this Act shall be detained for a longer period tained for a longer period than under all than is reasonable. The circumstances of the case is reasonable; and such period shall not in the absence of the special order of a Magistrate, whether having jurisdiction to try the case or not, exceed twenty-four hours exclusive of the time necessary for the journey of such person to the place where an Inspector of Customs and Excise may be and from thence to the

Court having jurisdiction to try the case.

46. All officers in charge of Police Stations shall take Police to take charge of charge of, and keep in safe custody, pending the orders of a Magistrate or of an Inspector of Customs and Excise, all articles seized under this Act which may be delivered to them, and shall allow any Customs and Excise Officer who may accompany such articles to the Police Station, or who may be deputed for the purpose by his superior officer to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the Officer in charge of the Police Station.

47. It shall be lawful for the Governor of any Province Closing of shop for the to which this Act applies, by notice in writing to the licensee, to require that any shop in which liquor or any intoxicating drug is sold, shall be closed, at such time or for such period as he may think necessary for the preservation of the public peace.

IX.—PENALTIES.

48. '[Whoever, in contravention of this Act or of any rule or order prescribed or notified thereunder or of any licence or permit granted

¹Section 48 substituted vide Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

thereunder:-

- (a) imports, exports, transports or possesses liquor or any intoxicating drug, or
 - (b) manufactures liquor or any intoxicating drug, or
- (c) cultivates the poppy or hemp (Cannabis sativa or Indica) or coca plant or collects the spontaneous growth of the hemp plant, or

(d) constructs or works any distillery or brewery or

other place for the manufacture of liquor, or

(e) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever, for the purpose of manufacturing liquor or any intoxicating drug, or

(f) sells any liquor or intoxicating drug, shall, on conviction before a Magistrate, be punished with fine which may extend to one thousand rupees or with imprisonment for a term which may extend to one year, or with both.]

49. Whoever, being the holder of a licence or permit

For misconduct by granted under this Act,—licensee, etc.

(a) fails to produce such licence or permit on the demand of any Customs and Excise Officer or of any other officer duly empowered to make such demand, or

(b) does any act in breach of the conditions of his licence

or permit not otherwise provided for by this Act, or

(c) [wilfully commits any contravention not otherwise provided for by this Act, of any rule or order prescribed or notified under this Act, or]

(d) permits drunkenness, riot or gaming in any place in which any liquor or intoxicating drug is sold or manufac-

tured, or

- (e) permits persons of notoriously bad character to meet or remain in any such place, shall, on conviction before a Magistrate, be punished for each such offence, with fine which may extend to one hundred rupees or with imprisonment which may extend to three months, or with both.
- For possession of illicit session any quantity of liquor or any intoxicating drug, knowing the same to have been unlawfully imported, transported or manufactured, or knowing the prescribed duty not to have been paid therefor, shall, on conviction before a Magistrate, be punished with fine which may extend to five hundred rupees or with im-

Section 49 clause (c) substituted vide Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

prisonment for a term which may extend to six months, or with both.

51. Any Customs and Excise Officer or other person who, without reasonable ground of suspicion, enters or searches, or causes to be searched,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any-

thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches, or

arrests any person,

or in any other way vexatiously exceeds his lawful powers, shall, on conviction before a Magistrate of the first class, be punished for each such offence with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

Act, who vexatiously and unnecessarily delays forwarding to an Inspector of Customs and Excise any person arrested or any articles seized under this Act shall, on conviction before a Magistrate of the first class, be punished with fine which may extend to one

hundred rupees.

153. Any officer or person who unlawfully releases or abets the escape of any person arrested For abetment of escape of person arrested, etc. under this Act, or abets the commission of any offence against this Act [or receives or retains any liquor or intoxicating drug in respect of which an offence has been committed, knowing or having reason to believe that such offence has been committed] or acts in any manner inconsistent with his duty for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or broken or the Excise revenue may be defrauded, shall, on conviction before a Magistrate of the first class, for every such offence be punished with fine which may extend to [one thonsand] rupees or with imprisonment for a term which may extend to [one year], or with both.

For Oustoms and Excise unwarrantable violence to any person in his custody shall, on conviction before a Magistrate of the first class, be punished with fine which may extend to one hundred rupees, or with imprisonment which

may extend to one month, or with both.

that an offence has been committed under this Act, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to a fourth part of the longest period of imprisonment provided for the offence, or with fine, or both.]

Note. - A fine imposed under this section may extend to the full amount for

the original offence.

For offences not othersion in contravention of any of the proviwise provided for. sions of this Act, or of any rule or order
made under this Act and not otherwise provided for in this
Act, shall, on conviction before a Magistrate of the first class,
be punished for each such wilful act or omission with fine which
may extend to two hundred rupees.

²[(2) Whoever having been previously convicted of an offence under this Act is again convicted of an offence punishment.

Tor subsequent offence an offence punishable under this Act shall be liable for every such subsequent offence

to punishment not exceeding double the punishment provided

herefor by this Act.]

57. In prosecutions under section 48, it shall be presumed, until the contrary is proved, that Presumption as to com. the accused person has committed mission of offence in certain cases. offence under that section in respect of any liquor or intoxicating drug, or any still, utensil, implement, or apparatus whatsoever for the manufacture of liquor, or any intoxicating drug, or any such materials as are ordinarily used in the manufacture of liquor, or any intoxicating drug, for the possession of which he is unable to account satisfactorily; and the holder of a licence or permit under this Act shall be punishable, as well as the actual offender, for any offence committed by any person in his employ and acting on his behalf under any of the previous sections of this Act as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence: Provided that no person, other than the actual offender,

Government Gazette dated 18th Phagan 1960. Section 55 was numbered as 56 and sections after that were also renumbered.

²Section 56 (2) added vide Notification No. 14 published in Government Gazette dated 17th

Phagan 1983.

shall be punished with imprisonment except in default of payment of fine.

In any case in which an offence has been committed under this Act, the liquor, drug, materials, still, utensil, implement or apparatus What things are liable to in respect of which an offence has been confiscation.

committed shall be liable to confiscation.

Any liquor, or intoxicating drug lawfully imported, exported, transported, manufactured, had in possession or sold along with, or in addition to, any liquor or intoxicating drug

liable to confiscation under this section, and

the receptacles, packages and coverings in which any such liquor, or intoxicating drug, materials, still, utensil, implement or apparatus as aforesaid is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts, boats or other conveyances used in carrying the same, shall likewise be liable to confiscation.

59. Whenever confiscation is authorized by this Act, Confiscation how order the Inspector of Customs and Excise or Magistrate ordering it may give the owner ed. of the thing liable to be confiscated an option to pay in lieu

of confiscation such fine as such officer thinks fit.

When an offence under this Act has been committed but the offender is not known or cannot be found, or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Inspector General of Customs and Excise or by any other officer authorized by him in that behalf who may order such confiscation:

Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and evidence, if any, which

they produce in support of their claims.

60. An Inspector of Customs and Excise may accept from any person whose licence or permit is Power to compound liable to be cancelled or suspended under offences. section 22 or who is reasonably suspected of having committed an offence under section 49 or section 56, a sum of money, not exceeding two hundred rupees, in lieu of such cancelment or suspension, or by way of compensation for the offence which may have been committed, as the case may be; and in all cases whatsoever in which any property has been seized as liable to confiscation under this Act may release the same on payment of the value thereof as estimated by him.

On the payment of such sum of money, or such value, or both, as the case may be, the accused person, if in custody, shall be discharged, the property seized shall be released and no further proceedings shall be taken against such person or property.

Provisions of the Criminal Procedure Code relating to execution so far as the same are applicable to offences committed under this Act.

The provisions of the Criminal Procedure Code relating to execution so far as the same are applicable and Bidhi applicable, and sections 54, 55 and 56 of Ranbir Dand Bidhi shall apply to all offences committed and to all persons punished under the provisions of this Act.

X.—MISCELLANEOUS.

Publication of rules and shall be made and issued by publication in three successive issues of the Jammu and Kashmir Government Gazette, and shall thereupon have the force of law and be read as part of this Act, and may, in like manner, be varied, suspended or annulled.

Act applies to the manufacture, possession, sale or supply by medical practitioners, chemists, druggists, apothecaries or keepers of dispensaries of any medicated article for bona fide medicinal purposes, or to the possession by the public of such articles lawfully supplied by them; but

(b) it shall be lawful for ²[the Government] at any time by notification to prohibit the import, export, transport, manufacture, possession, sale or supply whether for medicinal purposes or otherwise of any liquor or intoxicating drug otherwise than in accordance with such rules and conditions (if any) as may be prescribed by ²[the Government] in that behalf;

(c) it shall be lawful for ²[the Government] at any time by notification to exempt subject to such conditions, if any, as ²[the Government] may impose, any specified article or class of article or any specified person or class of person from the operation of all or any of the provisions of this

¹⁸ection 63 substituted vide Notification No. 14 published in Government Gazette dated 17th Phagan 1988.

28ec footnote under section 1.

Act or of Rules made or prohibitions notified thereunder and in like manner to cancel such

exemption;

(d) it shall also be lawful for '[the Government] to authorize the Inspector General of Customs and Excise to permit, subject to such restrictions and conditions as, the said Inspector General may in each case or class of cases prescribe, the possession by medical practitioners of liquor or 2[opium and hemp drugs] and the preparation by them of medicines containing the same for use in their practice.]

64. No action shall lie against '[the Government] or against any Customs and Excise Officer for damages Bar of actions. in any Civil Court for any act bon , fide done or ordered to be done in pursuance of this Act or of any law for the time being in force relating to the Excise revenue and all prosecutions of any Customs and Excise Officer, and all actions which may be lawfully brought against the Jammu and Kashmir Government or against any Customs and Excise Officer in respect of any thing done or alleged to have been done in pursuance of this Act, shall be instituted within six months from the date of the act complained of and one month after notice has been given in writing to '[the Government] or to the officer against whom the suit is to be brought.

In such actions for damages, it shall be lawful for the Court if tender of sufficient amount had been made before the action was brought, in awarding the amount so tendered, to refuse costs to the plaintiff and direct him to pay

the costs of the defendant.

THE OCTROI ACT, 1958.

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Preamble.

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SECTION.

- 1 Title, extent and commencement.
- 3-A. Customs Act to apply in certain matters.

2 Repeal.

4 Power to impose an octroi tax in towns duly notified.

3 Definitions.

5 Articles taxable and rates of taxation.

See footnote under section 1. In section 63 (d) "Opium and hemp drugs" substituted for "intoxicating drugs" vide order published in Government Gazette dated 1st Assnj 1988.

SECTION.

- 6 Exemption from Octroi duty etc.
- 7 Collections to be controlled by Inspector General of Customs and Excise.
- 8 Duty of importer to allow inspection of goods and documents relating thereto and to pay the tax demanded.
- 9 Officer demanding or collecting octroi to tender a bill or receipt.
- 10 Procedure in case of non-pavment on demand.
- 11 Penalty for evasion of payment of octroi.

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- 12 Enquiries to be made in accordance with law governing Criminal Procedure and decisions to be appealable.
- on the municipal improvements of the town where they are collected.
- 14 Power to make rules.
- 14-A. Prohibition of import or export.
- 15 Rules to be notified in the Jammu and Kashmir Government Gazette.
- 16 Punishment for infringement of rules duly promulgated.
- 17 Bar of actions.

THE JAMMU AND KASHMIR OCTROI ACT, 1958.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 5, dated 14th September 1901).

An Act to consolidate and amend the Law in force in the Jammu and Kashmir State relating to octroi and the collection and expenditure of the revenue derived therefrom.

Whereas it is expedient to consolidate and amend the law in force in the Jammu and Kashmir State relating to octroi and the collection and expenditure of the revenue derived therefrom; it is hereby enacted as follows:—

1. (1) This Act may be called "The Jammu and Kashmir Octroi Act, 1958".

(2) It extends to the territories administered by His Highness the Maharaja Bahadur of Jammu and Kashmir.

(3) It shall come into force on the 1st Katik 1958.

Commencement.

2. All previous enactments and orders governing the imposition or collection of any tax under Repeal. the title of the octroi tax or other matters connected with the same, except such of them as may specially be saved by notification by '[the Government] are hereby repealed.

3. In this Act—

Definition.

(a) "2[Inspector General] of Customs and Excise" denotes the person authorized to exercise subject to the approval of '[the Government], the chief control in matters relating to Customs and Excise in the Jammu and Kashmir State.

(b) "Inspector of Customs and Excise" denotes the

Chief Executive Officer of Customs and Excise for any Prov-

ince to which this Act applies.

(c) "Customs and Excise Officer" includes every officer of Customs and Excise for the time being in separate charge of a Custems or Octroi range, post or mahal or duly authorized to perform all or any of the duties of an officer so in charge.

(d) The octroi limits of any town shall be such limits as '[the Government] may from time to time, fix by notifica-

tion in the Jammu and Kashmir Government Gazette.

3.A The provisions of the Jammu and Kashmir Customs Act of 1958, in regard to the appointment, removal or punishment of officers appointed for the collection and control of the Customs and Excise revenue and for the delegation of powers and framing of rules in this respect by '[the Government] shall apply mutatis mutandis to this Act.

4. [The Government] may from time to time in the manner hereinafter laid down, impose in Power to impose an the whole or any part of any town specified octroi tax in towns duly by notification in the Government Gazette, notified. an octroi on animals or goods or both brought within the octroi limits for consumption and use therein.

The said octroi shall be leviable after due notification in the "Jammu and Kashmir Government Gazette" on such animals and goods and Articles taxable and rate of taxation. at such rates as '[the Government] may from time to time determine.

^{&#}x27;In sections 2, 3, 4, 5, 11, 13, 14 and 17 for the words "His Highness the Maharaja Behadur" the words. "the Government" substituted vide Act X of 1996 published in Government Gazette

[&]quot;Inspector General" substituted for "Superintendent" wherever it occurs vide Notification published in Government Gazette dated 10th Sawan 1986. *Section 8-A added Vide Notification published in Government 23rd Har 1971. Gazette dated

'6. The provisions of the Customs Law for the time being in force in regard to exemption from customs duty and refunds of customs duty and also the provisions of sections 16 and 17 of the Jammu and Kashmir Customs Act for the time being in force in regard to payment of duties short levied or erroneously refunded and to claims for refund of charges erroneously levied or paid, shall apply mutatis mutandis to exemption from refund and recovery of amounts short levied or erroneously refunded in the case of octroi duty, Possession Tax, and such minor taxes as Road Toll, Kahcharai, Banwaziri, Rafting fee and Arms licence fee, which are controlled by the Cus oms Department.

²[Goods reimported free of customs duty under section 22 of the January and Kashmir Customs Act 1958 shall also be exempt from payment of octroi duty provided such goods are reimported into the same octroi limits from which

they were exported].

7. The collection of the same shall be under the control of the Inspector General of Customs and Excise.

of Customs and Excise.

B. Every person bringing or receiving within the octroi limits of any town notified in this behalf any article on which octroi is chargeable shall, when required by an officer authorizable and to pay the tax demanded.

The ed by the Inspector General of Customs and Excise and so far as may be necessary the amount of tax chargeable:—

(a) permit that officer to inspect, examine, weigh and

otherwise to deal with the article;

(b) communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature which he may possess relating to the article; and

(c) pay the octroi tax at the rate demanded; and any person bringing or receiving within such limits any goods whether dutiable or not, in a closed package, shall allow such officer to inspect the contents of the same in order to ascertain whether duty is leviable or not.

9. Every officer demanding octroi by the authority of the Inspector General of Customs and Excollecting octroi to tender cise shall tender to every person introducting or receipt. ing or receipt any article on which the

ment Gazette dated 18th Poh 1982.

¹Section 6 clause 1 (as amended vide Notification published in Government Gazette dated 22nd Katik 1992) substituted vide Act X of 1992; as published in Government Gazette dated 12th Baisakh 1993.

2Addendum to Section 6 vide No. 22-N, dated 4th January, 1926 published in Govern-

tax is claimed a bill specifying the article taxable, the amount claimed and the rate at which the tax is calculated, or, if the octroi is paid on demand, a receipt giving the same particulars.

10. (I) In case of non-payment of any octroi on demand, the officer empowered to collect the same may seize any article on which the octroi is chargeable of sufficient value to satisfy

the demand.

(2) The Inspector of Customs and Excise for the Province may cause any property so seized, or so much thereof as may be necessary, to be sold by auction to satisfy the demand together with the expenses occassioned by the seizure, custody and sale thereof unless the demand and expenses are in the meantime paid after the lapse of one week from the seizure and after due notice has been given fixing the time and place of sale;

Provided that articles of a perishable nature which cannot be kept without serious risk of damage, may be sold after the lapse of such shorter time as he may, having regard to

the nature of the articles, think proper.

11. If goods passing the octroi limits of a town notified in this behalf are liable to the payment of octroi, then every person who with intent Penalty for evasion of payment of octroi. to defraud '[the Government] causes or abets the introduction of, or himself introduces or attempts to introduce within the said octroi limits, any such goods upon which payment of the octroi due on such introduction has neither been made nor tendered, shall, on proof of his offence, after due enquiry to the satisfaction of the Inspector of Customs and Excise for the Province, be punished with a fine which may extend to five times the amount of such octroi, or to fifty rupees, whichever may be greater. 2[The provisions of this and the last preceding sections shall apply, mutatis mutandis to evasions of kahcharai * * and other minor taxes controlled by the Customs and Excise Department in regard to which no separate enactment exists.]

Excise under the last preceding section shall be conducted so far as may be in accordance with law accordance with law accordance with law accordance with the law of the State gove n-cedure and decisions to be appealable.

orders passed by them under that section shall be appealable to the Inspector Gene-

'See footnote under section 2.

'Words in brackets in section 11 vide Council Resolution No. 28 dated 21st February 1902 published in Government Gazette dated 31st Har 1959 (v) and words "and toll" after "Kahcharai" deleted vide Act VIII of 1995.

ral of Customs and Excise '[an appeal against whose orders shall lie to '(the Government)].

Octroi collections to be spent on the municipal improvements of the town where they are collected.

The revenue collected under this Act in respect of imports into any town shall be expended on municipal improvements of that town, in such manner as '[the Government] may from time to time direct.

14. The Inspector General of Customs and Excise will be empowered, subject to the approval of [the Government] to make rules governing the following matters, namely:—

(a) the constitution of octroi posts and the exhibition

of the octroi tariff thereat,

(b) the grant of refunds on export of animals or goods,

on which octroi has been paid,

(c) the custody and storage of animals and goods declared not to be for use and consumption within the town into which they are brought,

(d) the exemption from octroi on reimport of animals and goods that have once paid it and are exported from the

towns into which they have been brought, and

(e) generally to carry out the provisions of this Act.

14-A. [The Government] may from time to time by notification in the Government Gazette restrict or prohibit the importation into or exportation from any town wherein an octroi tax is imposed under this Act of goods of any specified description.

Rules to be notified in Act shall be made and issued by publication and Kashmir discrete.

Rules to be notified in Act shall be made and issued by publication in three successive issues of the Jammu and Kashmir Government Gazette.

Jammu and Kashmir Government Gazette.

All such rules and notifications shall thereupon have the force of law and be read as part of this Act, and may in like manner be varied, suspended or annulled.

¹Words in section 12 added vide order published in Government Gazette dated 18th Sawan 1961 and in these words "Government" substituted for "Minister-in-charge" vide Act X of 1996.

^{*}See footnote under section 2.

Words at the end in section 12 substituted vide order published in Government Gazette dated 18th Sawan 1961 are now deleted vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

^{&#}x27;Section 14-A added vide Notification published in Government Gazette dated 31st Jeth 1978.

^{&#}x27;In section 14-A the words "the Government" substituted for the words "With the approval of His Highness the Maharaja Bahadur the Minister-in-charge of the Customs and Excise Department" vide Act X of 1996 published in Government Gazetted dated 15th Bhadon 1996.

Punishment for infringement of a rule or notification issued under section

14 or notification issued under section

14-A] duly promulgated shall be punishable, after enquiry by Inspectors of Customs and Excise, with fine which may amount to fifty rupees, subject to the same provisions in respect of the conduct of the enquiry and appeal as are laid down in the case of evasion of payment of duty.

17. No action shall lie against [the Government] of Jammu ane Kashmir or against any Customs and Excise Officer for damages in any Civil Court for any act bona fide done or ordered to be done in pursuance of this Act or of any law for the time being in force

relating to the octroi revenue.

And all prosecutions of any Customs and Excise Officer and all actions which may be lawfully brought against the Jammu and Kashmir Government or against any Customs and Excise Officer in respect of anything done or alleged to have been done in pursuance of this Act, shall be instituted within six months from the date of the act complained of and not afterwards:

Provided that no such suit shall be instituted until the expiration of one month after notice has been given stating the cause of action and the name and place of abode of the intending plaintiff, and the plaint must contain a statement that such

notice has been given.

In such action, if for damages, it shall be lawful for the Court if tender of sufficient amount had been made before the action was brought in awarding the amount so tendered, to refuse costs to the plaintiff and direct him to pay the cost of the defendant.

[Translated from original in Urdu published in Government Gazette dated 11th Har 1958.]

RULES PLACING RESTRICTIONS ON REMOVAL OF FEMALES FROM BALTISTAN.

No. 8 of 1958.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 35, dated 4th February, 1901.)

1. No Balti female will be permitted to go beyond the boundaries of Baltistan without presenting a permit (Such

Words in brackets in section 16 substituted wide Notification published in Government Gazette dated 31st Jeth 1978.

**See footnote under section 2.

permit, allowing such permission, will be granted under these Rules.)

2. All such applications for grant of permit, shall be presented before the Tehsildar of the *illaqa* in which such female resides. Such application shall be made by the female who wants to go beyond the boundaries of Baltistan through her husband, brother or any other proper guardian and it shall particularly contain the following facts:—

(a) Name of the female with age, parentage and resi-

dence,

(b) Name of the person (if any) accompanying her and his relation with her.

(c) Reason, why she wants to go beyond the boundaries of Baltistan,

3. On presentation of such an application, the Tehsildar shall enquire into the correctness of the facts mentioned in the application and after satisfying himself that—

(a) the said female is not of less than 50 years age, or

(b) in case her age is less than 50 years, her duly married husband, or her father or brother or any other proper guardian is accompanying her.

(c) She is not going out of Baltistan with some impro-

per motive.

will grant a permit under his signature and the seal of the Court permitting her to go out of the boundaries of Baltistan.

4. No permit will be given except under the provisions of

Rule 3.

5. An appeal against the order of the Tehsildar refusing to issue a permit shall bie to the Wazir Wazarat within 60 days from the date of such order.

6. A second appeal from the order of the Wazir Wazarat will bie to the Revenue Minister within three months from the

date of such order.

7. Whoever takes away or abets in taking away a Balti female beyond the boundaries of Baltistan or whosoever being a Balti female goes beyond the boundaries of Baltistan in contravention of these Rules, shall be punished with imprisonment which may extend to three months or with fine which may extend to one hundred rupees or with both.

THE JAMMU AND KASHMIR STATE FISHERIES ACT, 1960.

CONTENTS.

SECTION.

SECTION.

- 1 Short title and commencement.
- 2 Local extent.
- 3 Extent of repeal of the existing laws and practices; saving clause.
- 4 Interpretation clause.
- 5 Declaring what waters are "Sanctuaries", "Trout waters", "Reserved water's" and "Protected Waters"; declaring that fishing be prohibited adsolutely or subject to certain specified conditions.
- 6 Absolute prohibition against fishing in "Sanctuary".
- or "Protected" waters allowed only under a licence; use of dynamite etc. prohibited in any "water"; use of poison lime etc. prohibited in any "water"; erection of "fixed engine" etc. prohibited in any water; night fishing prohibited in any water; night fishing prohibited in any "Trout" or "Reserved" water; prohibition as to capture of English Trout; possession of nets by a person other

than a licence-holder prohibited; aiding and abeting the commission of any of the above offences prohibited; shikaries taking service not having a licence; general prohibition; penalties.

- 8 Further penalties.
- 9 Penalty for continuing to commit an offence after having been warved to desist.
- 10 Enhanced punishment awardable on second conviction, etc.
- 11 Courts by which offences under this Act are triable.
- 12 Rewards.
- 13 Procedure against accused persons.
- 14 Application for licences how made.
- 15 Grant of licence how made.
- 16 Special control of the Game Preservation Department in "Trout, Reserved and Protected waters".

THE JAMMU AND KASHMIR STATE FISHERIES ACT, 1960.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 3 dated 10th July 1903.)

Whereas it is expedient to consolidate and amend the law regulating the capture of fish within the territories of His Highness the Maharaja of Jammu and Kashmir, it is hereby enacted as follows:—

1. This Act may be called "the Jammu and Kashmir Short title and com. Fisheries Act," and shall come into force on the 1st day of Baisakh, Samvat 1960.

2. It shall extend to such local areas within the territories of His Highness the Maharaja of Jammu and Kashmir, as may, from time time, be declared by a notification, published in the Jammu and Kashmir Government Gazette, under the orders of '[the Government] in that behalf.

Bestent of repeal of the existing laws and practices.

is hereby repealed and the system hitherto in vogue in the Kashmir Province, of forming out the right of fishing known as Mahalion to exist.

All orders issued and taxes imposed, prior to the passing of this Act, shall, so for as they are consistent with the provisions contained in this Act or the rules made thereunder, be deemed respectively to have been issued and imposed hereunder.

4. In this Act, unless there is anything repugnant in the

Interpretation clause. subject or contexts,-

"Water" means and includes all rivers, streams and lakes; all ponds belonging to the State, and all tanks constructed by, or under the authority of, the State.

"Sanctuaries" mean and inc'ude waters, where fishing, because of the sacred nature of the places or otherwise, shall

under no circumstances, be permitted.

"Trout Waters" mean and include all waters, which are now being stocked with English trout, in which no fishing shall be permitted, except, under a special licence issued for that purpose under the conditions laid down under 'Notifiction 8, as well as a permit showing the water and period for which the licence is issued.

"Reserved Waters" mean and include waters where fishing shall not be permitted, except, under a special licence issued in that behalf, in the manner indicated hereafter, nor shall the capture of fish be allowed by means other than a rod and line or a casting net of the kind described in clause (15) of 'Notification 8.

N. B.—The ordinary landing net and bait net used by rod fishermen is permitted to be used, provided the owner holds a licence for rod fishing as laid down in ²Notification 8.

"Protected Waters" mean and include waters where fishing shall not be permitted, except under a licence issued in that behalf, in the manner indicated hereafter, nor shall the

²For Notification see Council order No. 606-O of 1939 published in Government Gazette dated 15th Bhadon 1996.

^{&#}x27;In section 2, 5 (1), 5 (2) and 17 for the words "His Highness the Maharaja Bahadur" the words "the Government" substituted vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996

capture of fish be allowed, except by one or other of recognised

modes of fishing.

"Fixed Engine" means and includes any net (other than those referred to in the clause above and the note thereto relating to "Reserved Waters"), and any cages, traps, sluice or other contrivance for taking fish, fixed in the soil, or made stationary in any other way.

N. B .- The erection of dams for working of mills, etc., is permitted, but in all cases a free channel must be left open for the passage of fish up and down the river. The channel should, if possible, be half the river but the rights of mill owners should be protected, so that a sufficiency of water is guaranteed for their mills. The construction of the dam to form a sluice for the capture of fish is

illegal as forming "Fixed Engine" under the terms of the above clause.

Declaring what waters are "Sanctuaries," "Trout waters", "Reserved waters" and "Protect-

ed waters."

5. (1) [The Government] may, by a notification published in the Jammu and Kashmir Government Gazette in that behalf, from time to time, declare the localities situated within the areas, in which this Act is in force, which shall for the purposes of this Act, be treated as "Sanctuaries", "Trout Waters," "Reserved Waters," and

Waters," respectively, and may, from time time, cancel or modify the same.

(2) [The Government] may, by a notification published in

Declaring that fishing be prohibited absolutely or subject to certain specified conditions.

the Jammu and Kashmir Government Gazette in that behalf from time to time, declare that the capture of fish by any of the recognised modes of fishing, be prohi-

bited absolutely or subject to certain specified conditions, within certain water or waters, or fix special fees for licences in any water or waters and may, from time to time, cancel or modify the same.

(3) The following places are reserved for rod-fishing only from April 15th to September 15th subject to the close seasons

laid down under 2Notification 7 (d):-

(a) The Sindh River at Ganderbal from half a mile below the old bridge to half a mile above the chenars on the left bank and including the "Island Pool", and also from 100 yards above Utkhuroo village to the chenar tree 300 yards below the village with the reservation that all fishing is stricly prohibited at Gandarbal within the limits of His Highness the Maharaja Sahib's camping ground.

(b) The Dal Gate Pool and the Canal Gate Pool just

above the Library, and the Pool at Badshahi Bagh.

N. B.-Sportsmen holding Rs. 5 licence for reserved Waters wishing to fish in the Dal Gate and Canal Gate Pool which lie within Municipal limits may be

See footnote under section 2. i. For Notifications See Council order No. 606-C. of 1939 published in Government Gazette dated 15th Bhadon 1996.

called upon to pay the extra Licence fee of Rs. 2 laid down by the Municipality

for fishing within Municipal waters.

(c) The bridges at Baramulla, Sopore, Sambal (with the exception of the limits of the sacred temple of "Nand Kæshar-Bharin''), Bijbihara from 100 yards up stream half a mile below the bridge and the Jhelum at Ningle from the mouth of the Woolar Lake to the boundary pillar.

(d) The Vishau with its branches from its source to the

bridge at Kaimoo.

6. Whoever is found fishing in any "Sanctuary" shall be liable to be punsihed with imprison-Absolute probibition ment of either description for a term which against fishing in "Sanctuary." may extend to two months or with fine which may extend to Rs. 100 or with both.

(a) Whoever is found fishing in any "Trout" "Reserved" or "Protected" water without hav-Fishing in "Trout", "Reserved" or "Protecting previously obtained a licence therefor, ed" waters allowed only in conformity with the rules set forth in under a licence.

¹Notification 8;

or (b) Whoever uses dynamite or other explosive substance in water with intent thereby to Use of dynamite etc., catch or destroy any fish that may be there; prohibited in any "water."

or (c) Whoever puts any poison, lime or other noxious material, into any water with intent there-Use of poison, lime etc., by to destroy or catch any fish; prohibited in any "water."

(d) Whoever erects a "Fixed Engine" or Weir on the bank of, or in, any "water" for the purpose Erection of "Fixed Engine" etc , prohibited of capturing fish, or uses for the like purin any water. pose any instrument or net other than those

allowed by 'Notification 8;

or (e) Whoever is found fishing in any "Trout" or "Reserved" water in contravention of the pro-Night fishing prohibited in any "Trout" or visions of 'Notification 6; Reserved' water.

(f) Whoever is found capturing English Trout in any form whatever, except as provided for under Prohibition as to cap-¹Notification 8; ture of English Trout.

or (g) Who, not being a licence-holder under the terms of this Act, is found in the possession Possession of nets by a of a net or nets for the illegal capture of person other than a licence-holder prohibited. fish;

or For Notifications See Council order No. 606-O. of 1939 published in Government Gazette dated 15th Bhadon, 1996.

(h) Whoever aids and abets the commission of any of the above offences;

Aiding and abetting the commission of any of the above offences prohibited.

or (i) Who, being shikari, shall take service with sportsmen not being licensed under section

Shikaris taking service 16 (c) infra; not having a licence.

(j) Whoever in any way contravenes or attempts to contravene the provisions of this Act or prohibition General the rules issued thereunder, for which no penalties. special punishment is provided, either in this Act or the rules aforesaid, shall be liable to be punished with imprisonment, eitler simple or rigorous, which may extend to one month or with fine which may extend to Rs. 50 or with both. While, if a shikari, he shall also be liable to have his licence ferfeited for one year or for such further period as may be considered necessary.

Note.—Imprisonment for an offence committed in "Trout" or "Reserved" waters may be either simple or rigorous, but it shall only be "simple" in the cas

of an offence committed in "Trotected Waters."

Exception.-Notwithstanding anything in clause (a) supra His Highness the Maharaja may exempt any specified individual or individuals from taking out licence for fishing in either "Trout" or "Res rved" or "Protected" Waters.

8. In addition to the punishment mentioned in section 6 and at the end of section 7 any fixed Further Penalties. engine or other article used for the capture of fish in contravention of the provisions of this Act or the rules issued thereunder, as well as any fish thereby captured, shall be liable to be confiscated by the Government.

Any person continuing to commit any of the offences

Penalty for continuing to commit an offence after having been warned to desist.

mentioned in sections 6 and 7, supra after he has been warned by any authority to desist, shall, in addition to the punishment awardable on first conviction, be liable to

be punished with a fine which may extend to Rs. 10, for each and every day succeeding that on which he was so warned.

Enhanced punishment awardable on second conviction, etc.

10. A person convicted twice or more frequently of the offence mentioned in section 6 supra, shall be liable to be punished with imprisonment (either simple or rigorous) for a period not exceeding six months or with fine not

exceeding Rs. 500 or with both. Similarly, a person convicted twice or more frequently of any of the offences mentioned in section 7 supra shall be liable to be punished with imprisonment (either simple or rigorous) which may extend to two months or with fine not exceeding Rs. 100 or with both.

11. Offences punishable under this Act or the rules made thereunder shall be tried and inquired into by the State Courts in the ordinary was

ces under this Act are triable.

by the State Courts in the ordinary way and in accordance with the Criminal Law of the State except when the

of the State, except when the accused are persons who are not liable to jurisdiction of the State Courts when the trial shall be in accordance with the provisions of the law for the time being in force and relating to such offenders.

12. (I) Any person or persons giving such bona fide information as shall lead to a conviction under these Acts (Fisheries) shall be entitled to a reward which may at the discretion of the Magistrate trying the case extend to the full amount of the fine inflicted.

(2) Watchers of the Game Preservation Department and fisheries who shall give information under para (1) supra shall

not be debarred from receiving the full reward.

(3) The Magistrate trying the case will have the power to grant the above rewards (1) and (2) supra on his authority without any reference to the Government.

- Procedure against accoefficer duly appointed in this behalf under the rules in force, has committed or has been accused of committing any offence under this Act, refuses, on demand of such officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.
- (2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate, if so required, provided that if such person is not resident in the State territories, the bond shall be secured by a surety or sureties resident in State territories.
- (3) Should the true name and residence of such person not be ascertained within 24 hours from the time of arrest, or should he fail to execute the bond, or if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

Note.—The procedure herein prescribed is applicable only in the case of accused who are liable to the jurisdiction of the State Courts. In other cases the person in whose presence the offence has been committed, should after ascertaining the name and address, report the matter through his superior officer to the Magistrate having jurisdiction. Should the accused decline to give his name and address, the matter should be reported at once to the Game Warden, Srinagar, who will take the necessary action.

Subject to the restrictions of section 15 applications for the grant of a licence for fishing in "Trout" or "Reserved" or "Protected" Application for licences waters will be made in accordance with the how made. provisions laid down in 'Notification 8 of this Act, and to the officer authorized to receive such applications under the same. Each such application shall be accompanied by a deposit of a fee leviable in respect of each such licence, according to clause 3 of the aforesaid notification.

15. On receipt of the application and the fee just mentioned, the officer referred to in the preceding section shall grant a licence in accord-Grant of licence how ance with clause (4) of 'Notification 8. made.

A licence thus granted will run for a period of one year, commencing from beginning of each Samvat year, with the following exception,-At Tangrot, where the licence will run from the commencement of the season, viz., January 1st each year; and,-In the case of Trout waters, where the licence shall extend during the fishing season only which for the present will be from April 1st to September 3oth.

16. (a) The grant of licences, the appointment and dismissal of watchers and matters of control. Special control of the whether financial or executive, in "Trout," Game Preservation Department in "Trout", "Reserved" and "Protected" waters shall

be under the Game Warden. ted" waters.

(b) The State reserve to themselves the right to close any river or part of a river at any time for State purposes, or if the river or part of the river in question has been too heavily fished, or for any other reason. The Game Warden is further authorized under this rule, to take immediate action if he is satisfied that it is necessary, reporting the steps taken to the Government; and in the event of a licence having been taken out for the period in question, the Game Warden is authorized to refund the licence fees that have been paid.

(c) The State reserve to themselves the right to refuse to issue any licence, or to cancel any licence, at any time, if

circumstances render it necessary.

(d) On all the Trout Waters, at Tangrot, and Ningle on the Jhelum no one shall take service as a regular shikari with sportsmen until he has been registered by the Game Warden, and granted a licence on the form prescribed.

Employers of shikaris are advised to insist on the shikaris producing their registration forms, as these show any adverse

entries which have been made against them.

17. [The Government] may, from time to time, make

¹ For Notifications See Conneil order No. 606-C. of 1939 purblished in Government Gazette dated 15th Bhadon, 1996. 2See footnote under section 2.

rules with regard to all or any of the following matters, as may be deemed necessary, and may cancel or modify the same. Rules thus made or modified shall, unless otherwise directed, have effect immediately on their publication in the Jammu and Kashmir Government Gazette:—

(a) The procedure to be observed in the matter of application for any grant of licences, the forms and local extent of such licences, and the maintenance of registers in connec-

tion with the issue of licences.

(b) The scale of fees for the different kinds of licences, their recovery and payment into the Treasury and the maintenance of register in connection with such recovery and payment into the Treasury.

(c) Declaring the recognised modes of fishing.

(d) Fixing the dimensions of meshes and rings in the different kinds of nets.

(e) Prescribing the procedure according to which the local Revenue authorities, under the orders of the Provincial Governors, shall render assistance to the State Game Preservation Department in the matter of the control of "Trout, Reserved or Protected waters."

(f) Prescribing the duties to be performed by the various officials to be appointed for the purpose of carrying out the

objects of this Act.

(g) Generally, for the carrying out of the provisions of this Act.

THE CANAL AND DRAINAGE ACT, 1963.

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[Translated from original in Urdu published in Government Gazette dated 18th Assuj 1967.]

THE CANAL AND DRAINAGE ACT, 1963.

(Sanctioned by His Highness the Maharaja Sahib Bahadur published in Government Gazette dated 18th Assuj 1967.)

An Act to regulate irrigation, navigation and drainage in Jammu and Kashmir State.

Whereas it is expedient to regulate the use and control of water for irrigation and other purposes from all rivers, streams, lakes and natural collection of standing water, it is enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called the Jammu and Kashmir State Canal and Drainage Act Samvat 1963.

It extends to the whole of Jammu and Kashmir State and and applies to all lands, whether permanently settled, temporarily settled, or free from revenue and it will come into force after it is sanctioned.

2. In this Act, unless there be something repugnant in the subject or context:—

Interpretation clause.

Canal' includes—

 (a) all canals, channels and reservoirs constructed, maintained or controlled by Government for the supply or storage of water;

(b) All works, embankments, structures, supply and escape channels connected with such canals, chan-

nels or reservoirs;

(bb) all water courses as defined in sub-section (2) of this section.

'(c) "any part of a" river, stream, lake or natural collection of water or natural drainage channel, to which the Government has applied the provisions of Part II of this Act.

(2) "Water-course" means any channel which is supplied with water from a canal, but which is not maintained at the cost of Government, and all subsidiary works belonging to any

such channel.

(3) "Drainage work" includes escape-channels from a canal dams, weirs, embankments, sluices, groins and other works for the protection of lands from flood or from erosion, formed or maintained by the Government under the provisions of Part VII of this Act but does not include works for the removal of sewage from towns.

(4) "Vessel" includes boats, rafts, timber and other floating bodies.

Vessel.

(5) "Governor" means the head revenue officer of a district and includes any other officer appointed under this Act to exercise all or any of the powers of a Governor.

Clause (bb) and words in inverted commas in clause (c) added vide Act IV of 1977 published in Government Gazette dated 16th Chet 1977.

(6) "Canal Officer" means an officer appointed under this Act to exercise control or jurisdiction over a canal or any part thereof; Canal Officer.

"State Engineer" means an officer exercising general con-

trol over a canal or portion of a canal.

"Divisional Canal Officer" means an officer exercising control over a division of a Canal;

"Sub-Divisional Canal Officer" means an officer exercising

control over a sub-division of a canal.

(7) "District" means a district as fixed for revenue pur-

poses.

The Government may from time to time declare, by 3. notification in the Government Gazette, the Power to appoint officers whom, and the local limits within which all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

All officers mentioned in section 2, clause (6) shall be respectively subject to the orders of such officers as the Govern-

ment from time to time direct.

PART II.

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES.

4. Whenever it appears expedient to '[the Government] that the water of any river or stream flow-Notification to issue when water supply is to ing in a natural channel, or of any lake or be applied for public purother natural collection of still water, poses. should be applied or used by '[the Government] for the purpose of any existing or projected canal or drainage-work 1[the Government] may, by notification in the official Gazette, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

²4-A. As soon as practicable, after the issue of such notification, the Governor shall cause public notice to be given at convenient places, stating that the Government intends to apply or use the said waters as aforesaid and that claims for compensation in respect of the matters mentioned in section

6 may be made before him.

'In section 4, 4-A, 5, 6, 15, 29, 33, 43, 44, 52, 53, 54, 55, 56, 60, 61, 66 and 71 for the word "Darbar" the words "the Government" substituted vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

Norg: See also Notification No. 11-L/84 published in Government Gazette dated 9th Maghar 1984. Section 4-A added vide Regulation IV of 1977 published in Government Gazette dated 16th

Obet 1977.

- 5. At any time after the day so named any Canal Officer, acting under the order of '[the Government] in this behalf, may enter on any land and remove any obstructions, and may close any channels, and do any other thing necessary for such application or use of the said water.
- 6. No compensation shall be awarded for any damage Damage for which com. caused by—
 pensation shall not be awarded.

(a) stoppage or diminution or percolation or floods;

(b) deterioration of climate or soil;

(c) stoppage of navigation, or of the means of drifting timber or watering cattle;

(d) displacement of labour.

But compensation may be awarded in respect of any of the following matters:—
which compensation may be awarded.

(e) stoppage or diminution of supply of water through natural channel to any defined artificial channel, whether above or under-ground, in use at the date of the said notification;

(f) stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification;

(g) stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification;

(h) damage done in respect of any right to a water-course or the use of any water to which any person has a prescriptive

right of 12 years;

(i) any other substantial damage, not falling under any of the above clauses (a), (b), (c), or (e) and caused by the exercise of the powers conferred by this Act which is capable of being ascertained and estimated at the time of awarding such compensation.

In determining the amount of such compensation, regard shall be had to the provisions of the State Land Acquisition [Law and Rules] and the amount of compensation shall be sanctioned by the Wazir-i-Wazarat or any other officer approinted by the Governor in this behalf. The Governor will

^{&#}x27;See footnote under section 4.

^{&#}x27;Substituted for "rules" vide Act IV of 1977 published in Government Gazette dated 16th Ohet 1977.

satisfy himself as to the fairness of the amount determined for

payment.

No right to any such supply of wates as is referred to in clause (e), (f) or (g) of this section, in respect of a work or channel not in use at the date of the notification, shall be acquired as against '[the Government],

and no right to any of the advantages referred to in clauses (a), (b) and (c) of this section shall be acquired as

against [the Government].

No claim for compensation for any stoppage, dimi-7. nution or damage shall be made after the expiration of one year from such stoppage, Limitation of claims. diminution or damage, unless the Governor is satisfied that the claimant had sufficient cause for not making the claim within such period.

8. The Wazir-i-Wazarat shall proceed to enquire into any such claim, and to determine the amount of compensation, if any, which Enquiry into claims and amount of compensashould be given to the claimant in ac-

cordance with the Land Acquisition '[Law and Rules.]

9. Every tenant holding an unexpired lease, having a right of occupancy, who is in occupation of Abatement of rent on of any land at the time when any stoppage interruption of water or diminution or water supply, in respect supply. of which compensation is allowed under section 6, takes place, may claim an abatement of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding.

If a water supply increasing the vlaue of such holding is afterwards restored to the said land, Enhancement of rent the rent of the tenant may be enhanced on restoration of water in respect of the increased value of such land due to the restored water supply, to an amount not exceeding that at which it stood immediately before the abate ment.

Such enhancement shall be on account only of the restored water supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

11. All sums of money payable for compensation under Compensation when this part shall become due three months due. after the claim for such compensation is made in respect of the stoppage, diminution or damage complained of.

¹ See footnote under section 4. 2See footnote under section 6

PART III.

OF THE CONSTRUCTION AND MAINTENANCE OF WORKS.

Power to enter and general or special order of a Canal Officer, may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon; and dig and bore into the sub-soil; and make and set up suitable land-marks, level. marks and water-gauges, and do all other acts necessary for the proper prosecution of any enquiry relating to any existing or projected canal under the charge of the said Canal Officer.

And where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle;

and may also enter upon any land, building or watercourse on account of which any waterregulate water supply.

rate is chargeable, for the purpose of inspection or regulating the use of the water
supplied, or of measuring the lands irrigated thereby or charge-

able with a water-rate, and of doing all things necessary for the proper regulation and management of such canal:

Provided that, if such Canal Officer or person proposes to enter into any building or enclosed court or garden attached to a dwelling house not supplied with water flowing from any canal, he shall previously give the occupier of such building, court or garden at least fifteen days' notice in writing of his intention to do so.

In every case of entry under this section, the Canal Officer shall, at the time of such entry, tender compensation for dam. pensation for any damage which may be occassioned by any proceedings under this section; and, in case of dispute as to the sufficieny of the amount so tendered, he shall forthwith refer the same for decision by the Governor and such decision shall be final.

Power to enter for hended to a canal any Divisional Canal of hended to a canal any Divisional Canal Officer or any person acting under his general or special orders in this behalf may enter upon any lands adjacent to such canal, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

In every such case such Canal Officer or person shall tender compensation to the proprietors or occupiers of the said lands for all damage done to the same. If such tender is not accepted, the Canal Officer shall refer the matter to the Governor, who shall proceed to award compensation for the damage as though the Governor had directed the occupation of the lands under the Land Acquisition [Law and Rules].

Application by persons may apply in writing to the Divisional or Sub-Divisional Canal Officer of the division or sub-division of the canal from which the water-course is to be supplied, requesting such officer add to construct or improve a water-course at the cost of the applicants.

The application shall state the works to be undertaken, the approximate estimated cost, or the amount which the applicants are willing to pay for the same, or whether they engage to pay the actual cost as settled by the Divisional Canal Officer, and how the payment is to be made.

When the assent of the State Engineer is given to such application, all the applicants shall, after the application has been duly attested before the Wazir-i-Wazarat, be jointly and severally liable for the cost of such works to the extent mentioned therein.

Any amount becoming due under the terms of such application and not paid to the Divisional Canal Officer, or the person authorised by him to receive the same, on or before the date on which it becomes due, shall, on the demand of such officer, be recoverable by the Wazir-i-Wazarat as if it were an arrear of land revenue.

Government to provide constructed or maintained at the cost of a cost of a constructed or maintained at the cost of a constructed or maintained at the cost of a covernment thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands.

On receiving a statement in writing, signed by not less than five of the owners of such lands, to the effect that suitable crossings have not been provided on any canal, the Gov-

Ohet 1977.

See footnote under section 4.

ernor shall cause enquiry to be made into the circumstances of the case and if he thinks that the statement is established, he shall report his opinion thereon for the consideration of '[the Government] and '[the Government] shall cause such measures in reference thereto to be taken as it thinks proper.

16. The Divisional Canal Officer may issue an order to

Persons using watercourse to construct works for passing water accross road. the persons using any water-course to construct suitable bridges, culverts or other works for the passage of the water of such water-course across any public road, canal

or drainage-channel in use before the said water-course was

made, or to repair any such works.

Such order shall specify a reasonable period within which

such construction or repairs shall be completed;

and if, after the receipt of such order, the persons to whom

it is addressed do not, within the said period, construct or repair such works to the satisfaction of the said Canal Officer, he may with the previous approval of the State Engineer, himself

construct or repair the same;

and if the said persons do not, when so required, pay the cost of such construction or repairs as declared by the Divisional Canal Officer, the amount shall, on the demand of the Divisional Canal Officer, be recoverable from them by the Governor as if it were an arrear of land revenue.

17. If any person, jointly responsible with others for the construction or maintenance of a water. Adjustment of claims between Persons jointly course, or jointly making use of a waterusing water-course course with others, neglects or refuses to pay his share of the cost of such construction or maintenance or to execute his share of any work necessary for such construction or maintenance, the Divisional or Sub-Divisional Canal Officer on receiving an application in writing from any person injured by such neglect or refusal, shall serve notice on all the parties concerned that, on the expiration of fortnight from the service, he will investigate the case, and shall, on the expiration of that period, investigate the case accordingly, and make such order thereon as to him seems fit.

Such order shall be appealable to the Governor, whose order thereon shall be appealable to the Revenue Minister.

Any sum directed by such order to be paid within a specified period may, if not paid within such
period, and if the order remains in force,
be recovered by the Governor, from the

person directed to pay the same, as if it were an arrear of land revenue.

Officer for a supply of water through and it appears to him expedient that such supply should be given and that it should be conveyed through some existing water-course he shall give notice to the persons responsible for the maintenance of such water-course to show cause, on a day not less than a fortnight from the date of such notice why the said supply should not be so conveyed: and, after making enquiry on such day, the Divisional Canal Officer shall determine whether and on what conditions the said supply shall be conveyed through such water-course.

When such officer determines that a supply of canal water may be conveyed through any water-course as aforesaid, his decision shall when confirmed or modified by the State Engineer, be binding on the applicant, and also on the persons responsible for the maintenance of the said water-course.

Such applicant shall not be entitled to use such water-course until he has paid the expense of any alteration of such water-course necessary in order to his being supplied through it, and also such share of the first cost of such water-course as Divisional or State Engineer may determine.

Such applicant shall also be liable for his share of the cost of maintenance of such water-course so long as he uses it. No claims arising out of the provisions of this section shall be de-

termined by a Civil Court.

19. Any person desiring the construction of a new waterApplication for cons. course may apply in writing to the Divitruction of new water- sional Canal Officer, stating—
course.

(I) That he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such water-course to pass, a right to occupy so much of the land as will be needed for such water-course.

(2) That he desires the said Canal Officer, in his behalf and at his cost, to do all things necessary for acquiring such

right;

(3) that he is able to defray all cost involved in acquiring such right and constructing such water-course.

Procedure of Canal 20. If the Divisional Canal Officer of Considers:—

(I) that the construction is expedient, and

he shall call upon the applicant to make such deposit as

the Divisional Canal Officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due under section 26 and, upon such deposit being made, he shall cause enquiry to be made into the most suitable alignment for the said water-course, and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof, and shall forthwith publish a notice in every village through which the water-course is proposed to be taken, that so much of such land as belongs to such village has been so marked out, and shall send a copy of such notice to the Governor of every district in which any part of such land is situate.

21. Any person desiring that an existing water-course should be transferred from its present Application for transfer of existing water- owner to himself may apply in writing to the Divisional Canal Officer stating:-

(I) that he has endeavoured unsuccessfully to procure

such transfer from the owner of such water-course;

(2) that he desires the said Canal Officer, in his behalf and at his cost, to do all things necessary for procuring such transfer;

(3) that he is able to defray the cost of such transfer: If the Divisional Canal Officer con-Procedure thereupon. siders:—

(a) that the said transfer is necessary for the better management of the irrigation from such water-course, and

(b) that the statements in the application are true, he shall call upon the applicant to make such deposit as the Divisional Canal Officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation that may become due under the provisions of section

26 in respect of such transfer;

and upon such deposit being made, he shall publish a notice of the application in every village, and shall send copy of the notice to the Governor of every Province through which such water-course passes. The Governor on receiving a notice shall, if the objections regarding construction of a new watercourse or transfer of an existing water-course from its present owner to the applicant be held genuine, determine the market value of the land through which the water-course is to pass.

Within thirty days from the publication of a notice 22. under section 20 or section 21, as the case Objections to construcmay be, any person interested in the land tion or transfer applied for. or water-course to which the notice refers may apply to the Divisional Canal Officer by petition, stating his objection to the construction or transfer for which application has been made.

The Divisional Canal Officer may either reject the petition or may proceed to enquire into the validity of the objection.

The Divisional Canal Officer shall record in writing all orders passed by him under this section and the grounds thereof. Appeals from his order shall lie to the Governor.

23. If no such objection is made, or where such objection is made and the Divisional Canal Offiwhen applicant may cer over-rules it, and in case appeal is filed that appeal is also rejected by the Governor, the Divisional Canal Officer shall proceed forthwith to place the said applicant in occupation of the land marked out or of the water-course to be transferred, as the case may be.

Procedure when objection the Divisional Canal Officer accordingly and, if such officer sees fit, he may in the case of an application under section 19, alter the boundaries of the land so marked out, and may give fresh notice under section 20 and the procedure hereinbefore provided shall be applicable to such notice, and the Divisional Canal Officer shall thereupon proceed as before provided.

25. If the Canal Officer disagrees with the Governor the Procedure when Oanal matter shall be referred for decision to the

Officer disagrees with Go- 1[the Government].

Such decision shall be final, and the Governor, if he is so directed by such decision, shall, subject to the provisions of section 26 cause the said applicant to be placed in occupation of the land so marked out or of the water-course to be transferred, as the case may be.

26. No such applicant shall be placed in occupation of land or water-course until he has paid to the person named by the Governor such amount as the Governor determines to be due as compensation for the land or water-

course so occupied or transferred, and for any damage caused by the marking out or occupation of such land, together with all expenses incidental to such occupation or transfer.

In determining the compensation to be made under this Procedure in fixing section the Governor shall proceed under the provisions of the State Land Acquisi-

tion '[Law and Rules.]

If such compensation and expenses are not paid when

demanded by the person entitled to receive the same, the amount may be recovered

the same, the amount may be recovered by the Governor as if it were an arrear of land revenue and shall, when recovered, be

paid by him to the person entitled to receive the same.

27. When any such applicant is placed in occupation of land or of a water-course as aforesaid, the applicant placed in occupation. In occupation of land or of a water-course as aforesaid, the following rules and conditions shall be binding on him and his representative in

interest:—

First.—All works necessary for the passage across such water-course, of water-course existing previous to its construction and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the neighbouring lands, shall be constructed by the applicant, and be maintained by him or his representative-in-interest to the satisfaction of the Divisional Canal Officer.

Second.—Land occupied for a water-course under the provisions of section 20 shall be used only for the purpose of

such water-course.

Third.—The proposed water-course shall be completed to the satisfaction of the Divisional Canal Officer within one year after the applicant is placed in occupation of the land.

In cases in which land is occupied or a water-course is

transferred on the terms of a rent-charge.

Fourth.—The applicant or his representative in interest shall so long as he occupies such land or water-course, pay rent for the same at such rate and on such days as are determined by the Governor when the applicant is placed in occu-

pation.

Fifth.—If the right to occupy the land cease owing to a breach of any of these rules, the liability to pay the said rent shall continue until the applicant or his representative-in-interest has restored the land to its original condition, or until he has paid, by way of compensation for any injury done to the said land, such amount and to such persons as the Governor determines.

Sixth.—The Governor may, on the application of the person entitled to receive such rent or compensation, determine the amount of rent due or assess the amount of such compensation; and, if any such rent or compensation be not paid by the applicant or his representative-in-interest, the

^{&#}x27;Substituted for "Rules" vils Act IV of 1977 published in Government Gasette dated 16th Chet 1977.

Governor may recover the amount, with interest thereon at the rate of six per cent. per annum from the date on which it became due, as if it were an arrear of land revenue, and shall pay the same, when recovered, to the person to whom it is due.

If any of the rules and conditions prescribed by this sec-

tion are not complied with,

or if any water-course constructed or transferred under

this Act is disused for three years continuously,

the right of the applicant, or of his representative-ininterest, to occupy such land or water-course shall cease absolutely.

28. The procedure hereinbefore provided for the occupation of land for the construction of a water-course shall be applicable to the occupation of land for any extension or alteration of a water-course, and for the deposit of soil

from water-course clearances.

PART IV.

OF THE SUPPLY OF WATER

In absence of written such contract does not extend, every supply to be subject to rules.

In absence of written ply of canal water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by '[the Government] in respect thereof.

30. Such contracts and rules must be consistent to the

Condtions as to. following conditions:-

(a) The Divisional Canal Officer may not stop the sup-Power to stop water ply of water to any water-course, or to any person except in the following cases:—

(I) whenever and so long as it is necessary to stop the supply for the purpose of executing any work ordered by competent authority and with the pre-

vious sanction of the Government;

(2) whenever and so long as any water-course is not maintained in such proper customary repair as to prevent the wasteful escape of water therefrom;

(3) within periods fixed from time to time by the

Divisonal Canal Officer:

(b) No claim shall be made against the Government for compensation in respect of loss caused Claims to compensation by the failure or stoppage of the water in in case of failure or stopa canal, by reason of any cause beyond page of water. the control of the Government, or of any repairs, alterations or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the Divisional Canal Officer considers necessary; but the person suffering such loss may claim such remission of the ordinary charges payable for the use of the water as is authorised by the Government.

(c) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the Claims on account of manner described in the last preceding interruption from other causes. clause, the occupier or owner of such land may present a petition for compensation to the Governor for any loss arising from such interruption, and the Governor may award to the petitioner reasonable compensation for such loss;

(d) When the water of a canal is supplied for the irrigation of a single crop, the permission to Duration of supply. use such water shall be held to continue only until that crop comes to maturity, and to apply only to that crop; but, if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year;

(e) Unless with the permission of the State Engineer, no person entitled to use the water of any Sale or sub-letting of canal, or any work, building or land apright to use canal water. pertaining to any canal, shall sell or sub-

let or otherwise transfer his right to such use:

Provided that the former part of this clause shall not apply to the use by a cultivating tenant of water supplied by the owner of a water-course for the irrigation of the land held

by such tenant:

But all contracts made between Government and the owner or occupier of any immoveable pro-Transfer with land, of perty, as to the supply of canal water to contracts for water. such property, shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes place:

(f) No right to the use of the water of a canal shall be, or be deemed to have been, acquired, nor No right acquired by

user.

shall Government be bound to supply any

person with water except in accordance with the terms of a contract in writing.

PART V.

OF WATER RATES.

If water supplied through a water-course be used in an unauthorised manner, and if the person by whose act or neglect such use has ocnet be identified.

the person on whose land such water flowed if such land

derived benefit therefrom,

shall be liable to the charges made for such use.

32. All charges for the unauthorised use or for waste other recoverable in of water may be recovered in addition to penalties. tion to any penalties incurred on account of such use or waste.

All questions under section 31 shall be decided by the Decision of questions Divisional Canal Officer, subject to an appeal ander section 31.

as may be provided under section 71.

132-A. If water supplied through a water-course be Liability when water suffered to run to waste and if after enquiry by the Divisional Canal Officer, the persons through whose act or neglect such water was suffered to run to waste, cannot be discovered, all the persons chargeable in respect of the water supplied through such water course shall be jointly liable for the charges made in respect of the water so wasted.

Oharges on occupier for water, how determined.

The rates to be charged for canal water supplied for purposes of irrigation to the occupiers of land shall be determined by the rules to be made by ²[the Government], and such occupiers as accept the water shall pay for it accordingly.

Occupier's rate.

A rate so charged shall be called the

"Occupier's rate".

The rules hereinbefore referred to may prescribe and determine what persons or classes of persons are to be deemed to be occupiers for the purposes of this section, and may also determine the several liabilities, in respect of the payment of the occupier's rate, of tenants and of persons to whom tenants may have sub-let their lands or of proprietors and of persons

¹Section 32-A added vide Act IV of 1977 published in Government Gazette dated 16th Chet
1977.
1See footnote under section 4.

to whom proprietors may have let the lands held by them in

cultivating occupancy.

34. In addition to the occupier's rate, a rate to be called the "owner's rate" may be imposed, according to rules to be made by the Government on the owners of canal-irrigated lands, in respect of the benefit which they derive from such irrigation.

35. The owner's rate shall not exceed the sum which, Amount of owner's under the rules for the time being in force for the assessment of land revenue, might be assessed on such land on account of the increase in the annual value or production thereof caused by the canalirrigation. And, for the purposes of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue.

'35-A. During the currency of settlemenet operations, occupier's rate shall not be charged upon land which has al-

ready been assessed at nehri rates.

36. No owner's rate shall be chargeable either on the owner or occupier of land temporarily assessed to pay land revenue at irrigation rates, during the currency of such assessment without the sanction of the Government.

When occupier to pay both occupier's rate and able to enhanced rent on account of the owner's rate.

when occupier to pay able to enhanced rent on account of the value of produce of land or productive power of land having increased due to irrigation, such owner or tenant shall pay occupier's rate as well as owner's rate.

Power to make rules for apportionment of apportionment of apportionment of apportionment of apportionment and his land lord rateably taking into consideration the right to profits accruing to each from such land.

When owner to pay the right to charge enhanced rent from the occupier on account of the value of the produce of land or productive power of land having increased due to irrigation or when at the time of fixing rent the land was irrigated by canal, the owner shall pay the owner s rate.

^{&#}x27;In section 35-A word "Nehri" substituted for "Abi" vide Act IV of 1977 published in Government G zette dated 16th Ohet 1977.

40. If on the plea of revised settlement operations a suit for enhancement of rent may be based, then in case of any land irrigated by a canal, the landlord shall be entitled to charge enhanced rent from an occupancy tenant of such land in the same manner as if such revised settlement operations had taken place according to which land revenue was enhanced on such land.

Water rate by whom payable when charged on land held by several manager or other person who receives the manager or other person who receives the rents or profits of such land, and may be deducted by him from such rents or profits before division, or may be recovered by him from the persons liable to such rate in the manner customary in the recovery of other charges on such rents or profits.

RECOVERY OF CHARGES.

fied by the Divisional Canal Officer to be so due, which remains unpaid after the day on which it becomes due, shall be recoverable by the Governor from the person liable for the same as if it were an arrear of land revenue.

43. The Divisional Canal Officer or the Governor may enter into an agreement with any person for the collection of canal dues.

[The Divisional Canal Officer or the Governor may enter into an agreement with any person for the collection and payment to '[the Government] by such person of any sum

payable under this Act by a third party.

When such agreement has been made, such person may recover such sum by suit as though it were a debt due to him, or an arrear of rent due to him on account of the land, work or building in respect of which such sum is payable, or for or in which the canal-water shall have been supplied or used.

If such person makes default in the payment of any sum collected by him under this section, such sum may be recovered from him by the Governor under section 42, and if such sum or any part of it be still due by the said third party, the sum or part so due may be recovered in like manner by the Governor from such third party.

Lambardars may be re. son under engagement to pay the land revenue of any estate, to collect and pay any sums payable under this Act

by a third party, in respect of any land or water in such estate.

Such sums shall be recoverable by the Wazir-i-Wazarat as if they were arrears of land revenue due in respect of the

defaulter's share in such estate;

and for the purpose of collecting such sums from the subordinate zamindars, raiyats, tenants or sub-tenants such lambardar or person may exercise the powers, and shall be subject to the rules, laid down in the law for the time being in force in respect to the collection by him of the rents of land or of shares of land revenue. '[The Government] shall provide—

(a) for remunerating persons collecting sums under this

section at the rate of 5 per cent. on the sum collected;

(b) for indemnifying them against expenses properly incurred by them in such collection; or

(c) for both such purposes.

Fines excluded from 45. Nothing in sections 42, 43 or 44 applies to fines.

PART VI.

OF CANAL NAVIGATION.

46. Any vessel entering or navigating any canal contrary to the rules made in that behalf by the Government or so as to cause danger to the canal or the other vessels therein, may be removed or detained, or removed and detained, by the Divisional Canal Officer, or by other person duly authorised in this behalf.

The owner of any vessel causing damage to a canal, or removed or detained under this section, shall be liable to pay to the Government such sum as the Divisional Canal Officer, with the approval of the State Engineer, determines to be necessary to defray the expenses of repairing such damage, or of such removal or detention, as the case may be.

Recovery of fines for of any vessel, or the servant or agent offences in navigating of such owner or other person in charge of any vessel, for any offence in respect of the navigation of such vessel may be recovered either in the manner prescribed by the Code of Criminal Procedure or, if the Magistrate imposing the fine so directs, as though it were a charge due in respect of such vessel.

¹ See footnote under section 4.

Power to seize and detain vessel on failure to the same, the Divisional Canal Officer may seize and detain such vessel and the furniture thereof, until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

Power to seize cargo in respect of any cargo or goods carried in a State vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal is not paid on demand to the person authorised to collect the same, the Divisional Canal Officer may seize such cargo or goods and detain them until the charge so due, together with all expenses and additional charges aris-

ing from such seizure and detention, is paid in full.

Procedure for recovery section 48 or section 49 the said Canal Officer shall give notice to the owner or person in charge of the property seized that it, or such portion of it, as may be necessary, will, on a day to be named in the notice, but no sooner than 15 days from the date of the notice, be sold in satisfaction of the claim on account of which such property was seized, unless the claim be discharged before the day so named.

And, if such claim be not so discharged, the said Canal Officer may, on such day, sell the property seized or such part thereof as may be necessary to yield the amount due, together

with the expenses of such seizure and sale:

Provided that no greater part of the furniture of any vessel or of any cargo or goods shall be so sold than shall, as nearly as may be, suffice to cover the amount due in respect of such vessel, cargo or goods.

The residue of such furniture, cargo or goods, and of the proceeds of the sale, shall be made over to the owner or per-

son incharge of the property, seized.

Procedure in respect of cargo or goods carried in a Government vessels abondoned and vessel on a canal or stored on or in lands or warehouses occupied for the purposes of a canal, be left unclaimed for a period of one month the Divisional Canal Officer may take possession of the same.

The officer so taking possession may publish a notice that if such vessel and its contents, or such cargo or goods, are not claimed previously to a day to be named in the notice, not

sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods be not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

The said vessel and its contents, and the said cargo or goods if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls, charges and expenses incurred by the Divisional Canal Officer on account of taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Divi-

sional Canal Officer.

If the Divisional Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold as aforesaid and the proceeds to be paid into the District treasury, there to be held until the right thereto be decided by a Court of competent jurisdiction.

PART VII.

OF DRAINAGE.

Power to prohibit or prohibit or public convenience has arisen or may arise from the obstruction of any river, stream or drainage channel, '[the Government] may, by notification published in the Government Gazette, prohibit, within limits to be defined in such notification, the formation of any obstruction, or may, within such limits, order the removal of other modification of such obstruction.

Thereupon so much of the said river, stream or drainage channel as is comprised within such limits shall be held to be

a drainage work as defined in section 2.

73. The Divisional Canal Officer, or other person authorised by '[the Government] in that behalf, may, after such publication, issue an order to the person causing or having control over any such obstruction to remove or

modify the same within a time to be fixed in the order.

If, within the time so fixed, such person does not comply with the order, the said Canal Officer may himself remove or mofidy obstructions; and if the person to whom the order was issued does not, when called upon, pay the expenses in-

volved in such removal or modification, such expenses shall be recoverable by the Governor from him or his representative-in-interest as an arrear of land revenue.

54. Whenever it appears to '[the Government] that |any drainage works are necessary for the improved provement of any lands, or for the proper cultivation or irrigation thereof,

or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands,

"[the Government] may cause a scheme for such drainage works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which '[the Government] proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

55. The persons authorised by '[the Government] to draw up such scheme may exercise all or employed on such any of the powers conferred on Canal Offi-

schemes. cers by section 12.

Rate on lands benefited charged, according to rules to be made by works. by '[the Government], on the owners of all lands which shall, in the manner prescribed by such rules, be determined to be so chargeable.

Such rate shall be fixed, as nearly as possible, so as not to

exceed either of the following limits:-

(I) six per cent. per annum on the first cost of the said works adding thereto the estimated yearly cost of the maintenance and supervision of the same, and deducting therefrom the estimated income, if any, derived from the works excluding the said rate;

(2) in the case of agricultural land, the sum which, under the rules then in force for the assessment of land revenue, might be assessed on such land on account of the increase of the annual value or produce thereof caused by the drainage

work.

Such rate may be varied from time to time, within such

maximum by '[the Government].

So far as any defect to be remedied is due to any canal, water-course, road or other work or obstruction, constructed or caused by '[the Government] or by any person, a proportionate share of the cost of the drainage works required for the remedy of the said defect shall be borne by '[the Government] or such person, as the case may.

57. Any such drainage rate may be collected and recovery of ate.

Covered in manner provided by sections 42, 43 and 44 for the collection and recovery of water-rates.

58. Whenever, in pursuance of a notification made under Disposal of claims to section 52, any obstruction is removed or

compensation. modified,

or whenever any drainage work is carried out under section 54, all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such work may be made before the Wazir-i-Wazarat and he shall deal with the same in the manner provided in section 8.

59. No such claim shall be entertained after the expir-Limitation of such ation of one year from the occurrence of the loss complained of, unless the Governor is satisfied that the claimant had sufficient cause for not mak-

ing the claim within such period.

PART VIII.

OF OBTAINING LABOUR FOR CANALS AND DRAINAGE WORKS.

60. For the purposes referred to in this part the word "labourer" includes persons who exercise any handicraft specified in rules to be made in that behalf by '[the Government.]

Procedure for obtaining duly authorised by '[the Government] that, unless some work is immediately executed, such serious damage will happen to any canal or drainage work as to cause sudden and extensive public injury,

and that the labourers necessary for the proper execution thereof cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so

as to prevent such injury,

the said officer may require any lambardar of a village to furnish as many labourers (not exceeding the number which is proper under the circumstances) as to the said officer seems necessary for the immediate execution of such work.

The Governor in consultation with the State Engineer shall fix, and may from time to time alter, the rates to be paid

to any such labourers:

Provided that such rates shall exceed the highest rates for the time being paid in the neighbourhood for similar work.

In the case of every such labourer, the payment shall continue for the whole period during which he is, in consequence of the provisions of this Part, prevented from following

his ordinary occupation.

'[The Government] may direct that the provisions of this part shall apply, either permanently or temporarily (as the case may be) to any district or part of a district for the purpose of effecting necessary annual silt clearances, or to prevent the proper operation of a canal or drainage work being stopped or so much interfered with as to stop the established course of irrigation or drainage.

62. When any requisition has been made on any person Liability of labourers mentioned in section 61, every labourer ordinarily residing within the village under requisition. estate of such person shall be liable to supply, and

continue to supply, his labour for the purposes aforesaid.

PART IX.

OF JURISDICTION.

- 63. Except where herein otherwise provided, all claims against Government in respect of anything Jurisdiction under this done under this Act shall be disposed of by the Governor subject to the appeal to the Revenue Minister.
- Whenever a difference arises between two or more 64. persons in regard to their mutual rights or Settlement of differences liabilities in respect of the use, constructas to mutual rights and liabilities of persons intion or maintenance of water-course, any terested in water-course. such person may apply in writing to the Divisional Canal Officer stating the matter in dispute. Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to enquire into the said matter. And after such enquiry he shall pass his order thereon, unless he transfers (as he is hereby empowered to do) the matter to the Governor who shall thereupon enquire into and pass his order on the said matter.

Such order shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made and shall thereafter remain in force until set

aside by the decree of a civil court.

Power to summon and any enquiry may exercise all such powers connected with the summoning and examining of witnesses as are conferred on Civil Courts by the Code of Civil Procedure, and every such enquiry shall be deemed a judicial proceeding.

PART X.

OF OFFENCES AND PENALTIES.

66. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:—

(1) damages, alters, enlarges or obstructs any canal or

drainage work;

(2) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under, any canal or drainage work;

(3) interferes with or alters the flow of water in any river or stream, so as to endanger, damage or render less

useful any canal or drainage work;

(4) being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorised distribution of the water therefrom, or uses such water in an unauthorised manner;

(5) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;

(6) causes any vessel to enter or navigate any canal contrary to the rules for the time being prescribed by '[the Government] for entering or navigating such canal;

(7) while navigating on any canal, neglects to take proper precautions for the safety of the canal, and of vessels

thereon;

(8) being liable to furnish labourers under Part VIII of this Act, fails without reasonable cause, to supply or to assist in supplying the labourers required of him;

(9) being a labourer liable to supply his labour under Part VIII of this Act, neglects, without reasonable cause, so to supply, and to continue to supply, his labour;

(10) destroys or moves any level-mark or water-gauge

fixed by the authority of a public servant;

(II) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels or a canal or

drainage work, contrary to rules made under this Act, after he has been desired to desist therefrom;

(12) violates any rule made under this Act, for

breach whereof a penalty may be incurred,

shall be liable on ocnviction before a Magistrate of such class as '[the Government] directs in this behalf, to a fine not exceeding fifty rupees, Penalty. or to imprisonment not exceeding one month, or to both.

67. Nothing herein contained shall prevent any person from being prosecuted under any other law

Saving of prosecution for any offence punishable under this Act. under other laws

Provided that no person shall be punished twice for the same offence.

68. Whenever any person is fined for an offence under this Act, the Magistrate may direct that the whole or any part of such fine may be Compensation to person injured. paid by way of compensation to the per-

son injured by such offence.

69. Any person in charge of or employed upon any canal or drainage work may remove from the lands or building belonging thereto, or Power to arrest without warrant. may take into custody without a warrant and take forthwith before a Magistrate or to the nearest Police Station, to be dealt with according to law, any person who, within his view, commits any of the following offences:-

(1) wilfully damages or obstructs any canal or drain-

age work;

(2) without proper authority interferes with the supply or flow of water in or from any canal or drainage work, or in any river or stream, so as to endanger, damage or render

less useful any canal or drainage work.
70. In this Part the nord "canal" shall (unless there be somethieg repugnant in the subject or con-Definition of canals. text) be deemed to include also all lands occupied by Government for purposes of canals, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by or belonging to Government upon such lands.

PART XI.

OF SUBSIDIARY RULES.

71. '[The Government] may from time to time make Power to make alter rules to regulate the following matters:and cancel rules.

¹ Bee footnote under section 4.

(I) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(2) the cases in which, and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeals, shall be appealable;

(3) the persons by whom, and the time, place or manner at or in which anything for the doing of which provision

is made under this Act, shall be done;

(4) the amount of any charge made under this Act;

(5) generally to carry out the provisions of this Act.

¹[The Government] may from time to time alter or cancel any rules so made.

Such rules, alterations and cancelments shall be published in the Government Gazette, and shall thereupon have the force of law.

THE JAMMU AND KASHMIR SILK PROTECTION ACT, 1964.

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- tion 411 Ranbir Penal Code.
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[Translated from original in Urdu published in Government Gazette dated 29th Assuj 1964.]

THE JAMMU AND KASHMIR SILK PROTECTION ACT, 1964.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's Letter No. 82-G, dated 14th August 1907.)

NOTIFICATION No. 14.

Dated the 15th Assuj 1964.

Whereas it is expedient to make law forbidding the unauthorised sale and keeping in possesion of silk cocoons and silk worms and the retention and keeping in possession of all kinds of Kashmir silk, the following Act is hereby issued:-

1. This Act shall be called the Kashmir Silk Protection Act, 1964, and shall extend to the whole of the Jammu and

Kashmir State territory.

The words (i) silk worm rearers, (ii) silk worm egg, (iii) silk cocoon and raw Kashmir silk shall have the same meaning as those which are generally assigned to them in the Jammu and Kashmir State.

Explanation.—Raw silk includes "Gudar".

3. If any silk worm rearer appointed by the Kashmir Sericulture Department, at the instance of the Director Sericulture or the persons appointed by the Director in this behalf, sells to any person or uses in any other manner the silk coccen reared by him which is in his possession, or the seeds of such silk entrusted to him for the purpose of rearing or if any person deliberately neglects to return all those silk cocoons reared by him or neglects to return on demand such seed in his possession to the said Director or to persons appointed by the Director in this behalf, he shall, on being convicted, be punished with imprisonment of either description which may extend to three years or with fine or with both.

4. If any person receives the silk cocoons from any silk worm rearer without the permission of the Director, or is found to be in possession of the silk cocoons or silk seeds without the permission of the Director or of the person appointed by him in this behalf, he shall be presumed to have received that stolen property knowing and believing it to be as such and may be prosecuted under 'section 311, Ranbir Dand

Bidhi.

5. If any person acquires such raw silk manufactured from those cocoons which are reared by the Kashmir Sericulture Department, without the sanction of the Director or of the persons empowered by him in this behalf, or is found to be in possession of such silk, he shall, on conviction, be punished with imprisonment of either description which may extend to three years, or with fine or with both.

6. All offences in contravention of this Act shall be tried in the Criminal Courts in accordance with the Criminal Law

and Practice in force in the State.

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- Power to compound offence.
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- Chief Conservator may issue 36 orders for details of working.
- Drift timber not attachable until released in favour of a claiment.
- Grant of rent free land to 37 British Government for timber depots.
- 33 Payment of all dues necessary

THE RIVER RULES 1965.

(Sanctioned by His Highness the Moharaja Sahib Bahadur under order, dated 16th December 1907, quoted in endorsement No 8,996, dated 11th January 1908, from the Chief Minister to the Foreign Minister of the Jammu and Kashmir Government.)

SECTION I.

Introductory.

- 1. These Rules shall come into force in the territories of the Jammu and Kashmir Government from Commencement and re-1st Har 1965, and from this date the River peal of previous Rules. Rules passed by the State Council on 29th Poh 1956, and the Chenab River Rules passed on 31st January 1891, shall be repealed. But all orders and procedure in force under those previous Rules shall, so far as they are consistent with these Rules, be deemed to have been made hereunder.
 - These Rules shall apply to all rivers in the Jammu and Kashmir State. Scope of the Rules.
 - In these Rules unless there be something repugnant in the subject or context:-Definitions.

"Forest Officer" means any person whom His Highness the Maharaja Bahadur or the Chief Conservator of Forests empowered by His Highness the Maharaja Bahadur in this behalf may, from time to time appoint by name, or as holding an office to carry out all or any of the purposes of these Rules, to do anything required by these Rules to be done by a Forest Officer.

"Timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not.

"River Offence" means an offence punishable under

these Rules.

"River" includes streams, canals, creeks and other channels, natural or artificial.

SECTION II.

REGISTRATION OF TIMBER PROPERTY MARKS.

- Registration of timber office of the Forest Officer in charge of the Division to which the control of the river pertains, the mark or marks which indicate their proprietary rights in such timber. A registration fee of five rupees shall be payable for each such mark provided that if the marks registered by any one owner or firm of owners exceed one, the said fee shall be ten rupees for each mark; provided that no person or firm may register more than one mark on either of the Jhelum, Chenab and Ravi river systems without the sanction of the Conservator of Forests within whose jurisdiction the river lies.
- ready registered in favour of another permust be distinctive.

 Timber property marks son in the Jammu and Kashmir Government territory or known to be registered in favour of another person in British territory nor any mark used by the Jammu and Kashmir Forest Department or the British Government and the Forest Officer in charge of the Division is authorised to refuse registration of any mark which in his judgment so closely resembles a mark already registered in favour of any such other person or used by the Jammu and Kashmir Forest Department or by the British Government as to be easily altered into such mark or vice versa.

Reciprocal and prompt interchange of copies of entries in their property mark register between the Jammu and Kash-

mir and British Divisional Officer is necessary.

16. Every registration under these Rules shall hold good for three years from the date of the registration to hold tration. A certificate showing the mark or marks registered, the date of registra-

Bale 6 su stituted (vide the Hon'ble Prime Minister's endorsement No. G. B. 716, dated the 12th March, 1934) published in Government Gazette dated 16th Chet 1990,

tion, the period for which it holds good and the fees charged shall be given to every person registering his mark or marks. (i) Notwithstanding anything con-

Temporary timber pro-

tained in the foregoing Rules:perty marks.

(a) temporary property marks, for special consignments of timber to be transported by water, may be registered by the Forest Officer in charge of the Division to which the control of the river pertains, or with the written permission of such forest officer, by the River Range Officer;

(b) such registration shall be made under such conditions as the Conservator of Forests may from time to time

direct;

(c) a fee of eight annas shall be payable for every sepa-

rate mark so registered; and

(d) every such registration shall hold good for three months only from the date of the registration.

(ii) Rule 5 of the foregoing Rules shall have effect in the

case of every registration made under this Rule.

8. No fee shall be levied for registering the property marks used on its timber by the British Government so long as the latter levies no Exemptions from payment of registration fees. fees for registering the timber property marks used by the Jammu and Kashmir Government nor for registering the property marks used on their timber by other Departments of the Jammu and Kashmir Government.

SECTION III.

ON TIMBER IN TRANSIT BY WATER.

9. It shall be incumbent on all persons who, having once launched their timber in any river, may be desirous to collect the same in Kashmir Permission to collect timber necessary. territory, to apply to the Forest Officer in charge of the Division to which the control of the river pertains, for permission in writing to collect the timber in those depots in which the collection is permitted.

Timber belonging to the British Forest Department shall

be exempted from this Rule.

10. The Forest Officer in charge of the Division shall publicly notify the names of the depots on each river under his charge at which the collection of timber shall be permitted.

11. No person shall raft or otherwise convey by river any timber which has been collected at any of the depots referred to above, without Rafting of timber without a pass prohibited. first obtaining a pass from the Fores Officer in charge of the Division or a Forest

Officer empowered by the former in this behalf. Such pass shall show the following particulars:-

(I) Name of owner and raftsman in charge.

(2) Description and number of logs and pieces.

- (3) Measurements in cubic feet, and estimated value of the timber.
 - (4) Timber property marks borne on the timber.

(5) Place of destination.

(6) Time for which the pass shall remain in force.

(7) Names of places where the timber may be stopped for examination.

(8) Amount of rafting fee and the place where it shall be collected.

No pass shall be issued for any unmarked timber with the exception of small pieces of firewood in boats or loads of bamboos.

12. The Forest Officer issuing a pass shall levy fees according to the scale in force at the time Scale of rafting fees under the orders of the Chief Conservator to be notified. of Forests who shall from time to time publicly notify a reasonable scale of fees according to the local circumstances of each river or place, but no such scale, shall, without previous sanction of '[the Government] exceed

one anna per piece.

13. Such fees shall not be levied on timber rafted by Public Departments of the Jammu and Kashmir Government for Jammu and Kashmir Government purposes, nor on timber belonging to the Punjab Government, so long as the latter levies no rafting fees on timber owned by the Jammu and Kashmir Government. Nor shall they be levied for the first time on timber released from a drift timber depot under Rules 28, 29 nor on any timber sold from a Jammu and Kashmir Government sale depot, provided it is conveyed by water within three months from the date of release or sale without alteration of shape.

2"Forest lessees of the the State and of the Illagas of Poonch and Chenani shall also be exempt from payment of

rafting fees".

14. It shall be incumbent on every person to whom such pass has been granted to produce it without demur for inspection by any duly Production of r.fting passes for inspection. authorised Forest Officer who may wish to see it and no person shall be entitled to raft or convey by

In Rules 12, 33 and 35 "the Government" substituted for His Highness the Maharaja Bah.dur vide Act X of 1996, published in Government Gazette dated 15th Bhadon 1996. 2Rule 13 P.r. 2 added vide Council order No. 514 of 1935 published in Government Gazette dated 24th Sawan 1992.

water any timber by virtue of a pass which he does not himself hold, but which is or is stated to be in the hands of some other person. In the event of the pass not being produced on demand, the Forest Officer may detain the timber, pending orders from the Conservator of Forests, within whose jurisdiction the river lies.

15. In the event of the timber mentioned in the pass

Extension of time ex. having expired before the arrival of timber covered thereby at its destination, the

Forest Officer in charge of the Division

may extend the period for which the pass shall be valid for such time as he may think proper at a charge not exceeding one fourth of the fees chargeable under Rule 12.

16. All rafts and timber lying in the river or on its banks a shall be securely fastened to the bank in such a manner as the Forest Officer to whom the application for a pass is made may direct, until a pass is issued, for their

removal.

17. No person shall, without the permission in writing Interference with of the Forest Officer in charge of the Division, cut up, burn, move, conceal, mark, efface, or alter any marks on, sell or in any way interfere with any timber while in transit on any river. Whenever such permission is granted, the place at which only it shall take effect shall be specified and such other conditions

as may be considered necessary shall be entered.

18. When the timber arrives at its destination, the pass Return of rafting shall be returned to the Forest Officer stationed at the place where the timber was last examined, if the place of destination be situated beyond the lowest post down to which the Jammu and Kashmir Government timber operations on the river are in force, the pass must be given up before leaving the post after such examination.

SECTION IV.

COLLECTION OF "DRIFT" TIMBER.

- 19.. By the term "Drift timber" is meant all timber Interpretation of "drift of the following descriptions:—
- (i) The collection of which has not been authorised under Rule 9.

(ii) In transit below the highest transit depot without being covered by the pass prescribed in Rule 11.

(iii) Bearing marks not registered in the Jammu and

Kashmir Government Forest Offices.

(iv) Bearing indecipherable or diverse marks.

(v) Bearing marks that have been tampered with.

(vi) All unmarked timber on the following, so far as such flow through, or border Jammu and Kashmir territory:-

- (a) The main stream and banks of the Jhelum River, below its junction with the Kunhar river below Domel.
- (b) The main stream and banks of the Chenab River, throughout its course.

(c) The main stream and banks of the Ravi river, throughout its course.

Note.—Banks include the bed of a river up to its highest flood level.

20. All drift timber found floating, stranded or sunk in the territory of the Jammu and Kashmir Drift timber property Government within a direct distance of five of Jammu and Kashmir Government until title miles from the bank of the cold weather established thereto. main channel of the river shall be considered the property of the Jammu and Kashmir Government, until any other claim is established there to. Such timber shall be secured and collected by the Jammu and Kashmir Forest Department and stored at the depots appointed for

- the collection of drift timber. Drift timber as defined in Rule 19(i) and (iii) to (vi) wherever found in Jammu and Kash-Drift timber to be distinctly marked. mir territory shall be impressed with a mark which should show that it is drift timber under the meaning of Rule 19, and also where it has been marked as such.
- 22. The Forest Officer in charge of the Division shall publicly notify the names of the depots Notification of drift at which drift timber (referred to in Rule timber depots. 20) shall be stored on the river under his charge. Copies of such notifications will be sent to the Punjab Forest Officers concerned.
- The Forest Officer in charge of the Division shall 23. from time to time publicly notify the Periodical notific .tion drift timber collected at each such depot of drift timber collected. showing marks quantity and description of timber and the salvage due thereon.

24. The amounts payable for the salvage of drift timber Calculation of salvage at any drift timber depot shall be the same as the amounts payable according to the contract for the salvage of the Jammu and Kashmir Government timber in force at the time of the delivery of the salved timber at such depot, or in the absence of any such contract and in any case not provided for by such contract, the Conservator shall fix a rate for salving with due regard to the circumstances of each case.

Exemption of super. With the property mark of the British Government and supermarked with the Jammu and Kashmir Government drift timber mark shall be made over to the British Forest Officials without charge of any salvage fees, provided reciprocal action is taken by the latter.

26. Any person desiring to claim any such drift timber Lodging of claims to should within two months of the date of ownership of drift timber. the notice, file in the office of the Forest Officer in charge of the Division a petition in writing setting

forth his reasons in support of his claim.

27. On receipt of any such claim within the term prescribed, the Forest Officer in charge of the Division shall make enquiry into the validity of the claim, and record his order thereon within one month after the expiry of the period laid down in the notice issued under Rule 23.

28. The Forest Officer in charge of the Division may release the timber in favour of any claimant who establishes his claim or he may reject any claim recording the reasons for his decision in his order. If such timber is claimed by more than one person, the Forest Officer in charge of the Division may either deliver the same to any of such claimants whom he deems entitled thereto, recording his reasons in his order, or may refer the claimants to the Civil Courts, retaining possession of the timber pending the receipt of an order from such Court for its disposal.

Appeal against order of Forest Officer in charge of the Division may appeal against the said order in the Civil Court within three months of the date of the order and until a decision has been communicated to the Forest Officer in charge of the Division on such appeal, the timber in question, if not already released in favour of another claimant under Rule 28, shall remain in the custody of the Jammu and Kashmir Forest Department.

30. No person shall have any right to claim damages on Olaim for damage not account of any delay or loss arising in consequence of the orders issued by the Forest Officer in charge of the Division under Rules 27, 28 and 29

unless he causes such loss or damage negligently, maliciously or fraudulently.

31. All timber (i) for which no claim has been preferred under Rule 26 or (ii) the claim for which Disposal of unclaimed having been instituted has been rejected timber. under Rule 28 and no appeal has been filed within the period specified under Rule 29 shall be considered the property of the Jammu and Kashmir Government without further room for dispute. Similarly if any timber has been released in favour of any person under Rules 28 or 29, it shall be considered his property.

32. No Department of the Jammu and Kashmir Gov-

Drift timber not attachable until released in favour of a claiment.

ernment, nor the Civil or Criminal Courts, shall pass any orders attaching any drift timber until it has been released in favour

of some person under Rule 28 or 29 or until a decision has been recorded in favour of some person

in the Civil Court under the same Rules.

Irrespective of any orders passed under Rules 28 or 29 relative to the release of any drift timber, no person shall be permitted to Payment of all dues necessary before release. remove any such timber until he has paid to the Forest Officer in charge of the Division all the sums due thereon on account of salvage and other expenses incurred on collection of the said timber by the Jammu and Kashmir Forest Department or depot rent in accordance with the rules sanctioned by '[the Government].

34. Whoever infringes any provision of these Rules shall be punished for every such offence with Penalties. imprisonment which may extend up to six months or with fine which may extend to five hundred rupees

or with both.

'[The Government] may from time to time by notification in the Jammu and Kashmir Gov-Power to compound offence. ernment Gazette, empower a Forest Officer

by name, or as holding an office.

(a) To accept from any person against whom a reasonable suspicion exists that he has committed any river offence, a sum of money by way of compensation for the offence which such person is suspected to have committed upto a maximum of Rs. 50 (fifty) for each such offence.

²(b) When any timber in respect to which a river offence has been committed has been seized to release the same on payment of the value thereof as estimated by such officer.

See footnote under section 12. Rule 35 (b) substituted vide Revenue Department Notification No. 40, dated 29th September 1933 published in Government Gazette dated 20th Assuj 1990.

36. The Chief Conservator of Forests may issue from time to time the necessary orders to regulate working in accordance with the foregoing Rules.

any rent in respect of land occupied by the British Government for timber depots situated within Jammu and Kashmir territory, the British Government having similarly consented to forego the right to recover rent of lands held by the Jammu and Kashmir Government for the purpose of timber depots within British territory.

[Translated from original in Urdu published in Government Gazette dated 11th Poh 1968. (V)].

NOTIFICATION.

Prohibiting sale of meat and liquor in Parmandal and Uttarbahni.

Command of His Highness the Maharaja Sahib Bahadur.

We agree with the opinion expressed by the Chief Minister. Parmandal and Uttarbahni are the famous and sacred shrines of the Hindus. Sale of meat and liquor in these places has been prohibited from the time of late His Highness Maharaja Sahib Bahadur of revered memory. In conformity with the old practice, it is hereby ordered that sale of meat and liquor in both these places is prohibited in future also and the same may be notified.

28TH ASSUJ 1968.

THE SMALL CAUSE COURT ACT, 1968.

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THE SMALL CAUSE COURT ACT, 1968.

(Sanctioned under His Highness the Maharaja Sahib Bahadur's Order No. 288 dated 2nd June 1911.)

CHAPTER I.

PRELIMINARY.

1. This Act relates to the Court of Small Causes established in the town of Srinagar and its suburbs, and shall apply to any other Small Cause Court that may hereafter be established in any other town or towns within the territories of His Highness the Maharaja Sahib Bahaur, and shall be called the Small Cause Court Act for the Jammu and Kashmir State.

2. It shall come into force on the 1st day of Baisakh,

Commencement. 1968.

Jurisdiction of Spinagar at Srinagar in the Province of Kashmir, Small Cause Court. shall extend to the whole of the town of Srinagar, and its suburbs as specified in the schedule annexed herewith. The limits of the said jurisdiction may be extended from time to time by special orders of '[the High Court.]

4. Nothing in this Act shall be construed to affect any proceeding, before or after decree, in any suit, instituted before the commencement of this Act, or any local law or any special law, other than

the Code of Civil Procedure.

5. In this Act, unless there is something repugnant in the subject or context, [Court of Small Causes] means a Court of small causes consituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

G. ²[The Government] shall ³"on the recommendation of High Court" appoint a judge for the said Court to be styled Judge of the Small

'In section 3 the words "the High Court" substituted for the words "His Highness" vide Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

Bah idur' the words 'the Government' substituted vide Act X of 1996 published in Government Gasette dated 15th Bhadon 1996.

Inserted by notification 3-L/85 published in Government Gazette dated 8th Badon 1985.

Cause Court.

7. (I) '[The Government] may ''on the recommendation of High Court', by order in writing, appoint an Addi-

tional Judge of the Small Cause Court.

(2) The Additional Judge, when appointed, shall discharge such of the functions of the Judge of that Court, as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge.

(3) The Judge may withdraw, from the Additional Judge,

any business pending before him.

(4) When the Judge is absent, the Additional Judge may

discharge all or any of the functions of the Judge.

- 8. A Judge or additional Judge of a Court of Small Causes may be suspended "from office by the High Court subject to the confirmation of '[the Government] and removed from office by '[the Government] on the report of the High Court".
- 9. In case there are more than one Judges appointed, "the High Court" may, by order in writing, direct that two Judges or a Judge and an Additional Judge of the Small Cause Court, shall sit together for the trial of such class or classes of of suits or applications cognizable by a Court of Small Causes as may be described in the order.

10. (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last fore-Decision in case heard by going section, differ as to a question of law

a bench. or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of Chapter XLVI of the Code of Civil Procedure shall apply to the reference.

(2) If they differ on any matter other than a matter specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

(3) For the purposes of sub-section (2) a Judge permanently appointed shall be deemed to be senior to an officiating

Judge.

See footnote 2 under section 6

^{*}See footnote 3 under section 6. *Substituted by Notification 3-L 85 published in Government Gazetted dated 8th Bhadon 1995.

11. (1) '[The Government] may ''on the recommendation of the High Court" appoint to a Court of Small Causes an officer to be called the Registrar.

Registrar of the Court. (2) Where a Registrar is appointed, he shall be the chief

ministerial officer of the Court.

(3) 3"The Registrar shall have, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees."

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

(5) A Registrar may 2"on the recommendation of the High Court" be suspended from office by the High Court subject to the confirmation of His Highness and removed from office by His Highness on the report of the High Court."

12. '[The Judge Small Cause Court shall appoint, suspend, dismiss, grant leave and fine all menials of his court. He shall also have power to grant casual leave to and fine clerks of his court. The power to transfer, appoint, suspend, dismiss and grant leave (excepting causal leave) to such clerks shall be exercised by the District Judge in consulation with the Judge Small Cause Court].

13. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned Duties of Ministerial officers. in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature

as the Judge directs.

(2) The High Court may make rules consistent with this Act and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

14. (1) A Court of Small Causes shall not take cognizance of the suits specified in the 2nd schedule Cognizance of suits by Courts of Small Causes. as suits excepted from the cognizance

18ee footnote under section 6.

^{*}Inserted by Notification 3-L)85 published in Government Gazette dated 8th Bhadon 1985. *Substituted by Notification 3-L 84 published in Government Gazette dated 27th Baisakh 1984.

Section 12 substituted vide chief Minister Letter No. 531/P-25-15 dated 18th May, 1915 published in Government Gazette dated 8th Bhadon 1972 (V).

of a Court of Small Causes.

(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, '[the High Court] may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable

by a Court of Small Causes mentioned in the order.

15. Save as expressly provided by this Act or by any other enactment for the time being in Exclusive jurisdiction of force, a suit cognizable by a Court of Small Cuorts of Small Causes. Causes shall not be tried by any o'her Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

CHAPTER IV.

PRACTICE AND PROCEDURE.

16. (1) 2"The procedure prescribed in the Code of Civil Procedure, 1977, shall, save in so far as is Application of the Code otherwise provided by that Code or by this of Civil Procedure, Act", be the procedure followed in a Court of Small Causes in all suits cognizable by it, and in a'l

proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realised in manner provided by section 2[145] of the Code of Civil Pro-

cedure, 3[1977]

17. (1) Suits cognizable by the Registrar under section II sub-sections (3) and (4), shall be tried by him and decrees passed therein shall Trial of suits by Registrar. be executed by him, in like manner in all

*Added by Regulation 9 of 1988 published in Government Gazetted dated 18th Har 1988.

Substituted by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985 for the words "His Highness the Maharaja Sahib Bahadur". 2Substituted by Regulation 9 of 1988 published in Government Gazette dated 18th Har 1988.

respects as the Judge might try the suits, and execute the de-

crees, respectively.

(2) The Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

18. (1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not Admission, return and been appointed or, having been appointed, rejection of plaints by Reis also absent, the Registrar may admit giartar. a plaint, or return or reject a plaint for any reason for which the Judge might return or reject it.

Until a Registrar is appointed the Proviso . Reader of the Court may admit a plaint,

but shall not return or reject the same.

(2) The Judge may, of his own motion, or on the application of a party, return or reject a plaint which has been admitted by the Registrar or the Reader, or admit a plaint

which has been returned or rejected by the Registrar;

Provided that where a party applies for the return or rejection or the admission of a plaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar or Reader admitted, or the Registrar returned or rejected, the plaint, the Judge shall dismiss the application, unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

(1) If, before the date appointed for the hearing of Passing of decrees by a suit, the defendant or his agent duly Registrar on admission. authorized in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree, which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds and in the same manner, as if the decree

had been passed by himself.

20. (1) If, the Judge is absent, and an Additional Judge Execution of decrees by has not been appointed or, having been appointed, is absent, the Registrar may, subject to any instructions which he may have received from the Judge or, with respect to decrees or, orders made by an Additional Judge, from the Additional Judge, make any orders

in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge might make under this Act.

- (2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (I), or the Additional Judge, in the case of any such decree or order which has been made by himself, and with respect to which proceedings have not been taken by he Judge under this sub-section, may of his own motion, or on application made by a party within 15 days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order.
- (3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the State law of Limitation, as though the application of the party were an application for review of judgment
- Adjournment of cases sent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.
- Return of plaints in tion of this Act, when the right of a plain-suits involving questions tiff and the relief claimed by him in a Court of small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may, at any stage of the proceedings, return the plaint to be presented to a Court having jurisdiction to determine the title.
- (2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure, and make such order with respect to costs as it deems just; and the Court shall, for the purposes of the State Law of Limitation, be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

Order VII Rule 10 Code of Civil procedure, 1977.

Where an order specified in "clause (h) or clause (b) of sub-section (I) of section 104 of the Appeals from certain the Code of Civil Procedure, 1977" is made order of Courts of Small by a Court of Small Causes, an appeal there-Causes. from shall lie to the "District Court, on any ground on which an appeal from such order would lie under that section."

The High Court, for the purpose of satisfying itself that a decree or order made in any case Revision of decrees and decided by a Court of Small Causes was orders of Courts of sm 11 C.uses. according to law, may call for the case and

pass such order with respect thereto as it thinks fit.

Save as provided by this Act, a decree or order made under the foregoing provisions of Finality of decrees and this Act by a Court of Small Causes shall orders. be final.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

26. (1) A Court of Small Causes shall be subject to the administrative control of the Provincial Sadar Court and to the superintendence of Subordination of Courts of Small Causes. the High Court, and shall:-

(a) keep such registers, books and accounts as the

High Court from time to time prescribes, and

(b) comply with such requisitions as may be made by the Provincial Sadar Court, the High Court, or the Government for records, returns and statements in such form and manner as the authority making the requisition directs.

(2) The relation of the Sadar Court to a Court of Small Causes, with respect to administrative control, shall be the the same as that of the Sadar Court to the Court of Sub-Judge

ist grade.

A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Seal. ²[High Court].

³[The Government] may, '[on the recommenda-28. Abolition of Courts of tion of the High Court] by order in Small Causes. writing, abolish a Court of Small Causes.

Words in inverted commas in section 23 substituted by Regulation 4 of 1988 published in Government Gazet,e dated 18th Har 1988. Substituted by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

Inserted by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985

29. (1) Nothing in this Act shall be construed to prevent the '[High Court| from appointing a person Saving of power to who is a Judge or Additional Judge of a appoint Judge of Court Court of Small Causes to be also a Judge of Smill Causes to other Office. of any other Civil Court or to be a Magis-

trate of any class or to hold any other public office.

(2) When a Judge or additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the '[High Court | may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge

of the duties of the other office.

29-A. '[The High Court] will be authorised to invest under this Act a District Judge, a Sub-Judge or a Munsiff with powers of a Judge of Small Cause Court to hear suits triable by a Small Cause Court of the value which ""the High Court" may deem proper and which will not be more than five hundred rupees and to exercise such powers within such local limits as '[the High Court] may fix; '[the High Court] may also withdraw powers so conferred.

30. (1) So much of Chapters III and Application of Act to Courts invested with Jurisdiction of Courts of small IV as relates to—

(a) the nature of the suits cognizable by Courts of Small Causes,

(b) the exclusion of the jurisdiction of other Courts in

those suits,

(c) the practice and procedure of Courts of Small Causes,

(d) appeal from certain orders of those Courts and revision of cases decided by them, and

(e) the finality of their decrees and orders subject to

such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

31. A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction and the same Court Application of Act and Code to Court so invested. with respect to the exercise of its jurisdic-

¹³¹ betitated by Notification 3-L/35 published in Government Gazette dated 8th Bhadon 19854 *Section 29-A wided by Ailan No. 15 1 tel 17th Jawan, 1970 published in Government Gazette dated 27th Sawan 1970.

tion in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

32. Notwithstanding any thing in Modification of Code

the last foregoing sections,as so applied.

(a) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

(b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Cuases,

the documents mentioned in 'section 224 of the Code of Civil Procedure shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

- 33. (I) Where a Court of Small Causes, or a Court incontinuance of pro. vested with the jurisdiction of a Court of Small Causes, has from any cause ceased to ceedings of abolished Courts. have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.
- (2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure as extended to Courts of Small Causes or in any other enactment for the time being in force.

34. All orders required by this Act to be made in writing *] shall be published in the Jammu and Kashmir

Government Gazette.

SCHEDULE I.

List of Suburbs of the Town of Srinagar.

Mirbehri Villages Viz:

- Naupura I.
- Karapura 2.

^{10.21} Rule 6 Civil Procedure Code, 1977. Words "by the Darbar" deleted by Notification No. 3-L/85 published in Government Gamette dated 8th Bhadon 1985.

- 3. Nandpura
- 4. Buchhwara
- 5. Gupkar
- 6. Zithiyar
- 7. Nishat
- 8. Shalamar
- 9. Hazratbal
- 10. Nasim Bagh
- II. Telbal
- Gupt Ganga
- 13. Bren
- 14. Thid
- 15. Vicharnag
- Bagat Barzala
- 17. Karalpura
- 18. Pand Chak
- 19. Pandrethan
- 20. Rambagh.

SCHEDULE II.

Suits excepted from the cognizance of a Court of Small Causes.

I. A suit concerning an act or order purporting to be done or made by the '[Government], or by a Minister '[* *] or by a Governor, in their official capacity, or concerning an act purporting to be done by any person by order of the '[Government], or a Minister, a Governor or a Head of the Department;

2. a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a

Judicial Officer acting in the execution of his office;

3. a suit concerning an act or order purporting to be done or made by any other officer of the State in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office;

4. a suit for the possession of immoveable property or

for the recovery of an interest in such property;

5. a suit for the partition of immovable property;

6. a suit by a mortgagee of immovable property for the foreclosure of the mortgage or for the sale of the property, or

od in Government Gazette dated 15th Bhadon 1996. Note:—See also Notification No. 11-L/84 published in Government Gazette dated 9th Magher 1984.

21n Para 1 words "of the Darbar" occurring between the word "Minister" and "or by" deleted vide Act No. X of 1996 published in Government Gazette dated 15th Bhadon 1996,

by a mortgagor of immovable property for the redemption of the mortgage;

7. a suit for the assessment, enhancement, abatement

or apportionment of the rent of immovable property;

8. a suit for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the '[Government] with authority to exercise jurisdiction with respect thereto;

9. a suit concerning the liability of land to be assessed

to land revenue.

10. a suit to restrain waste;

a suit for the determination or enforcement of any

other right to or interest in immovable property;

- 12. a suit for the possession of an hereditary office or of an inteest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office;
- 13. a suit to enforce payment of the allowance or fees respectively called Malikana and haq, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property, or in an hereditary office, or in a shrine or other religious institution;

14. a suit to recover from a person to whom compensation has been paid under the State Land Acquisition Act, the

whole or any part of the compensation;

- 15. a suit for the specific performance or recission of a contract;
- 16. a suit for the rectification or cancellation of an instrument:

17. a suit to obtain an injunction;

- 18. a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution:
- 19. a suit for a declaratory decree, not being a suit instituted under section 2283 or section 3332 of the Code of Civil Procedure;
- 20. a suit instituted under section 2283 or section 3332 of the Code of Civil Procedure.
- 21. a suit to set aside an attachment by a Court or a revenue-authority, or a sale, mortgage, lease or other transfer by a Court or a revenue-authority or by a guardian;

^{&#}x27;See footnote under para 1.

^{20 21} Rule 63 Oivil Procedure Code, 1977.

O. 21 Rules 100, 101, 103 Oivil Procedure Code, 1977.

SCHEDULÉ

of a Court, or of a person acting in a Judicial capacity;

24. a suit to contest an award;

25. a suit upon a foreign judgment as defined in the Code of Civil Procedure, or upon a judgment obtained in the Courts of the State;

26. a suit to compel a refund of assets improperly distributed under 'section 295 of the Code of Civil Procedure;

27. a suit under the Indian Succession Act, 1865, section 320 or section 321, or under the 'Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets;

Note.—To be adopted as far as applicable.

28. a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate;

29. a suit—

(a) for a dissolution of partnership or for the windingup of the business of a partnership after its dissolution;

(b) for an account of partnership-transactions; or

(c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents;

30. a suit for an account of property and for its due ad-

ministration under decree;

31. any other suit for an account, including a suit by a mortgagor, after a mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant;

32. a suit for a general average loss or for salvage;

33. a suit for compensation in respect of collision between boats;

34. a suit on a policy of insurance or for the recovery of any premium paid under any such policy;

35. a suit for compensation;

(a) For loss occasioned by the death of a person caused by actionable wrong;

(b) for wrongful arrest, restraint or confinement;

(c) for malicious prosecution;

(d) for libel;

¹Section 73 Civil Procedure Code, 1977. ²Probate and Administration Act, XXIX of 1977.

(e) for slander;

(f) for adultery or seduction;

(g) for breach of contract of betrothal or promise of marriage,

(h) for inducing a person to break a contract made with

the plaintiff;

(i) for obstruction of an easement or diversion of a

water-course;

'(ii) for an act which is, or, save for the provisions of Chapter IV of the Ranbir Dand Bidhi, would be, an offence

punishable under Chapter XVII of the said Code;

(j) for illegal, improper or excessive distress, attachment for search, or for trespass committed in or damage caused by, the illegal or improper execution of any distress, search or illegal process;

(k) for improper arrest under Chapter XXXIV, of the Code of Civil Procedure or in respect of the issue of an injunction wrongfully obtained under "Chapter XXXV of that

Code; or

(1) for injury to the person in any case not specified in the foregoing sub-clauses of this clause;

a suit by a Muhammadan for exigible (mua'jjal) or

deferred (mu'wajjal) dower;

a suit for the restitution of conjugal rights, for the recovery of a wife, for the custody of a minor, or for a divorce;

38. a suit relating to maintenance;

- a suit for arrears of land revenue, village expenses or other sums payable to the representative of a village-community or to his heir or other successor in title;
- 40. a suit for profits payable by the representative of a village-community or by his heir or other successor in title after payment of land revenue, village expenses and other sums;
- 41. a suit for contribution by sharer in joint property in respect of a payment made by him of money due from a cosharer, or by a manager of joint property, or a member of an undivided family in respect of a payment made by him on account of the property or family;

a suit by one of several joint mortgagors of immovable property for contribution in respect of money paid by

him for the redemption of the mortgaged property;

43. a suit against the State to recover money paid under protest in statisfaction of a claim made by a revenue-authority

¹⁽ii) added and (i) substituted by Act IV of 1977, Schedule 1 published in Government Gazette dated 16th Chet 1977. Reference to chapters of Ranbir D.,nd Bidhi may be construed as reference to the same chapters of Ranbir Penal Code.

Order XXXVIII of the Gode of Civil Procedure, 1977. Order XXXXIX of the Code of Civil Procedure, 1977.

on account of an arrear of land revenue or of a demand recover-

able as an arrear of land revenue;

¹43-A. a suit to recover property obtained by an act which is, or, save for the provisions of Chapter IV of the Ranbir Dand Bidhi, would be, an offence punishable under Chapter XVII of the said Code;

44. a suit the cognizance whereof by a Court of Small Causes barred by any enactment for the time being in force.

THE CONSTRUCTION OF BRICK KILNS AND PREPARATION OF SURKHI, LIME AND PLASTER OF PARIS IN THE KASHMIR PROVINCE RULES, 1969.

CONTENTS.

Preamble.

RULE.

- 1. Title and date of enforcement.
- 2. Retrospective effect.
- 3. Application for construction of a brick kiln.
- 4. Procedure on presentation of application.
- 5. Location of a kiln.
- Fees.

RULE.

- Construction of kiln for purposes of Government.
- 8. Procedure of keeping accounts of fees.
- 9. Contravention and its punishment.
- 10. Appeal and revision etc.

Forms.

Article 43-A added by Act IV of 1977, Schedule I, published in Government Gazette dated 16th Ohet 1977. Reference to the chapters of Ranbir Dand Bidhi may be construed as reference to the same chapters of Ranbir Penal Code.

[Translated from original in Urdu published in Government Gazette dated 18th Har 1969 (V).]

THE CONSTRUCTION OF BRICK KILNS AND PRE-PARATION OF SURKHI, LIME AND PLASTER OF PARIS RULES, 1969.

AILAN NO. 7 DATED 5TH HAR 1969 RELATING TO RULES REGARDING THE CONSTRUCTION OF BRICK KILNS AND PREPARATION OF Surkhi, LIME AND PLASTER OF PARIS IN THE KASHMIR PROVINCE.

Rules regarding the construction of brick kilns and preparation of Surkhi, Lime and Plaster of Paris in the Kashmir Province sanctioned by His Highness the Maharaja Bahadur under order No. 11/72 dated 6th Jeth 1969.

Whereas no rules have so far been sanctioned regarding the construction of brick kilns and preparation of surkhi, lime and plaster of Paris and whereas it is expedient that rules should be framed, it is hereby enacted as follows:—

1. These Rules may be called the Rules regarding the Title and date of en. construction of brick kilns and preparation of surkhi, lime and plaster of Paris and

shall come into force from the 1st of Sawan 1969.

2. These Rules shall not have any re-

Retrospective effect. trospective effect.

Application for con. submit an application to the Tehsildar on struction of a brick kiln. one anna stamp in the Form A appended. '[This application will not be necessary when a kiln is to be set up by a land-holder having proprietory rights in the village for his own use.]

4. ²[On presentation of an application under Rule 3, Procedure on presentation the Tehsildar will ascertain whether the tion of application. kiln is to be set up by the applicant on his own land or on the land entered in the name of some person other than the applicant. If a kiln is to be set up on land entered in the name of some person other than the applicant, an enquiry shall be made from that other person whether he has any objection, and if he objects or the land is reserved for kahcharai, licence shall be refused. When no objection is made and the applicant by means of an affidavit takes res-

In Rule 3 words in [] added vide Act XIII of 1993 published in Government Gazette dated 1st Phagan 1993,

Section 4 substituted and Exception A deleted and Exceptions B and C renumbered as A and B vide Act XIII of 1993 published in Government Gazette dated 1st Phagan 1993.

ponsibility for the payment of the land revenue, licence shall

be granted in the Form B.]

EXCEPTION A. Fees for kilns constructed by any person in the villages of Jagirs of Sri Raja Sahib or Deorhi Khas or in the villages of Dharmarth Department shall be paid in the treasuries of respective Jagirs.

EXCEPTION B. If any person prepares bricks and lime for use in any well, tank, mosque, temple or other work of charitable nature, he shall be exempt from the payment of fees.

5. As a rule, a brick kiln should be set up at a distance of '[one hundred and fifty yards (four hundred and fifty feet)] from abade-deh, so that bad smell may not spread in the village and cause injury to the health of the villagers. Areas for construction of brick kilns shall be specified outside the limits of a Municipal Committee or '[Town Area] and these Rules shall not, in any way, affect the bye-laws of the Committee or '[Town Area.]

Kiln though the kiln is worked only for a part of the year and this fee shall be continued to be paid annually so long as the licensee does not get his name removed from the register of licensees by making a

regular application to the Tehsildar.

Note. -- A separate fee of one anna per yard is fixed for all stones imported into the city and the contract for quarring and preparing plaster of Paris is

sanctioned by the Forest Department.

If a person sets up a kiln for his own use on his own land he shall not be liable to pay any fees. But an annual fee of Rs. 6 shall be charged if he sets up a kiln for trade purposes on his own land entered in his name.]

7. If any department of the Government is desirous of Construction of kiln constructing a kiln for purposes of Government, it shall before doing so proceed to acquire land on which kiln is to be constructed according to the provisions of the Land Acquistion Act.

Procedure of keeping gister kept in tehsil office and made out in a foil and counterfoil according to the Form B attached. A statement showing all amounts received from different persons and prepared according to Form C shall be sent every month from the Tehsil office to the District office, and it

of 1993 published in Government to zette dated 1st Phagan 1993.

*Words added vide Act XIII of 1993 published in Government Gazette dated 1st Phagan

Para in [] to Rule 6 . dded vide Act XIII of 1993 published in Government Gazette dated 1st Phagan 1923.

shall be the duty of the Sadar Wasal-Baqi Nawis to check the statement with a view to find out whether the number of the licensees has decreased. In case of decrease in the number of licensees a report shall be submitted to the Wazir Wazarat and an enquiry shall be made through the Tehsildar so that no person should work a kiln without paying licence fee. This will also keep the Wazir Wazrat duly informed and he will be in a position to check the register.

9. Whoever contravenes any of the foregoing rules shall contravention and its be punished by the Tehsildar under his adpunishment.

Description and its be punished by the Tehsildar under his adpunishment.

These powers with fine which may extend to 25 rupees. These powers shall also form part of the Circular dated 19th Chet 1950 granting administrative powers

to the Tehsildars.

Appeal and revision observed in administrative orders shall also be followed in the orders passed under these Rules.

11. These Rules shall, if necessary, be amended in the light of experience gained about their working.

FORM A.

| 13 | Order of Tebsildar regarding grant of licence. | |
|----|---|--|
| 12 | Signature of applicant. | |
| = | Date of starting kiln, | |
| 10 | Amount of fee to be paid. | |
| 6 | Distance from Abade-Deh | |
| œ | Tarticul its of articles to be pre- pared in kiln i. c. bricks, lime, surkhi or plaster of paris. | |
| - | Number of kilns. | |
| 9 | Area for which application is ables | |
| o | Mame of village where kiln is to be constructed, | |
| | | |
| * | Occapation. | |
| 80 | Residence. | |
| 8 | Parentuge and caste. | |
| | Name of applicant. | |

| Name of village. | 2 |
|--|-------|
| ocolliz to om. K | |
| Serial No. | - |
| というなできるようなできることできることできることできることできることできることできることできること | St. K |
| Signature of Tebsildar. | = |
| Date of termination of the licence. | 0 |
| Date of beginning of the licence. | 6 |
| Amount deposited. | œ · |
| Date of deposit of fee in the treasury. | 1 |
| Number of kilns for which licence obtvined. | 9 |
| Measurement of area to be used for kiln. | 9 |
| Khasra Number of area to be used for kiln, | 4 |
| Name of licensee with parentage and residence. | e |
| Name of village. | 6 |
| Serial No. | - 1 |

| Signature of Tebsildar. | 13 |
|--|----|
| Bignature of clerk issuing licence. | |
| Date of termination of the licence. | |
| Date of deginning of the licence. | |
| Amount deposited. | |
| Date of deposit of fee in the treasury. | - |
| Number of kilns for which licence obtained. | |
| Measurement of erea to be used for kiln. | |
| Name of licensee with parentage and residence. Khasta Number of area to be used for kilm. | |
| | |
| Serial No. | _ |

FORM C.

-for the month of-

Monthly statement of kilns in the Tehsil-

| 13 | Remarks |
|----|---|
| 13 | Date of getting of licence. |
| = | Amount of fee deposited. |
| 10 | Date of depositing fee with No. of Treasury receipt |
| 6 | Number of kilns |
| 80 | Particulars of kiln. |
| - | In which Khata the area appli- ed for is entered in the papers. |
| 9 | Mensurement of area applied for. |
| 10 | . У фазта Матрет. |
| 81 | Whether the applicant is already licenses or not |
| က | Name of applicant with parent- age, caste and residence. |
| , | Vame of ▼illage. |
| . | Sethal No. |

Norg -If any licensee has not renewed his licence, a report should be submitted with the statement that he had not obtained the licence and reasons should also be given.

GAME LAWS NOT! FICATION, 1913-14, SAMVAT 1970. CONSOLIDATED UP TO SAMVAT 1996 (1938-39).

1. The rules apply to all European and Indian residents and visitors, ladies as well as gentlemen including all State-subjects and officials, with the exception of those who have been specially exempted by order of His Highness the Maharaja Bahadur.

2. The rules are applicable to the Kashmir Province, the Astore Tehsil, including the Bunji Niabat, the Ladakh, Skardu, Kargil and Kishtwar Tehsils as at present existing

with the following exceptions:-

(a) The illaga of the Raja of Poonch.

(b) All Rakhs or State Game Reserves which now exist or may be hereafter formed. The existing Rakhs or State Game Reserves are:—

KASHMIR PROVINCE.

(1) Dachigam.

(2) Khanmoo and the grass-farm between Sangri and Chak Khanmoo.

(3) Khrew.

(4) Tral-cum-Kherim and Panyar, as far as the Bhoog-mar road.

(5) Khul basin in Awantipura Tehsil.

(6) Anchar lake from Petakundel to Sangam.

(7) Hokar Sar Jhil.

(8) Hygam Jhil.

JAMMU PROVINCE.

| (1) Ramnagar(2) Keran(3) Kheri(4) Bahu. | Jammu Tehsil. |
|--|--|
| (5) Mansar (Tunnel) | Jammu & Reasi Tehsils.)Jammu, Samba and Ram- |
| (7) Sansu.(8) Tandeh.(9) Nehranal.(10) Kotli. | nagar Tehsils. Udhampur Tehsil. |
| (11) Thanoa. (12) Janganoo. (13) Dalsar. (14) Marh. | Ramnagar Tehsil. |

- (15) Gurarh. (16) Badyal. (17) Makwal.
- (18) Agrachak.

 (c) I. The Gandoos and the Rumbak Nullahs belong-

ing to the Raja of Khaplu.

2. The Shigar, the Randu and the Kiris Nullahs also portions of the Mantho and Satpur Nullahs as demarcated in (1905) belonging to the Rajas of Tolti and Skardu respectively.

3. The Harcho Nullah in Astore belonging to the

Raja of Astore.

Notes.— (i) The Shankracharya hill from the Gagribal point upto and including the basin above Pandrathan is a sanctuary.

(ii) In the illaga of the Raja of Poonch no one is allowed to shoot without

the permission of the Raja Sahib, Poonch.

(iii) Permission to shoot in the Nullahas referred to in sub-section (c) above can only be obtained from the Rajas concerned.

(iv) Shooting in any Rakh or State Game Reserves in 2(b) is strictly pro-

hibited without special permission of His Highness the Maharaja Bahadur

(v) Entering the Game Reserves and Sancturies in rules 6(i) and 12 without permission is strictly prohibited.

(vi) The undermentioned marge on the north side of the Sindh Valley are

closed for all grazing.

Lung marg, Mohand marg, Lar marg, Kanidalau and all intermediate

ground.

(vii) All demarcated forests in Kashmir are governed under the Forest Acts, and offences under these Acts may be dealt with by the penalties prescribed therein.

3. Special rules as in appendices I, II and III govern the shooting in and special permits (without which no one is permitted to travel or shoot) are required for:—

(a) The Astore shooting district.

(b) The Kajnag and Kafir-Kund areas including the Moji and the Shamashberry Rakhs.

(c) The Ladakh District including Chhangchhenmo.

Notes —(i) Application for such rules and permits should be made by sportsmen in each case to the Game Warden.

(ii) All routes leading into Astore from Baltistan are closed except under special permission which may be obtained in special cases only from the Political Agent, Gilgit.

(iii) Sportsmen visiting Ladakh and Baltistan should apply for a parwana

to obtain transport and supplies on these routes to the Game Warden.

(iv) Until the passes are officially declared open sportsmen will be given no official assistance in obtaining coolies to cross the Zojila and Burzil passes, but will have to make their own arrangements.

(v) All taking of life is strictly prohibited on His Highness' and

Maharajakumar's auspicious birthdays.

Driving of Black Bears, Leopards and Pigs is permitted from March 15 to September 30 inclusive. On the open area in the hills between Verinag and Baramulla on the left bank

of the Jhelum river, driving of such game is allowed from March 15 to November 15 inclusive. With the above excep-

tions driving game with men and dogs is prohibited.

5. Except in rare instances where owing to excessive numbers other arrangements become necessary, the destruction of females and catching of Ovis Hodgsoni (the ammon of sportsmen), Sharpu, Burhal, Markhor, Ibex, Tibetan Antelope, Gazelle, Barking Deer, Kashmir Stag (Barasingha), and Brown Bear with small cubs at heel is forbidden.

The Game Warden is however authorised to give written permission for a fixed number of fema'es of these animals to be shot within a defined locality, when he is convinced that such action is necessary and in the interests of sport. Such permission if given is to be restricted to licence-holders or to

State servants detailed for this work only.

6. (a) Shooting, killing and catching of Yak is totally

prohibited.

(b) No Musk Deer, either male or female, may be killed, taken or caught except under rule 15 licence VI, or under the authority of a written order obtained from the Game Warden but such permission shall only be given in rare instances.

(c) All shooting, killing and catching of Ibex is forbidden in the Valley of Kashmir, i.e., the whole area which comprises the water-shed of the Jhelum river and its tributaries above

Baramulla.

(d) The killing of serow is prohibited between Chashma

Shahi Sanctuary and Dachigam Rakh.

(e) The killing of Markhor is prohibited in all Nullahs flowing into the Indus above Randu in Baltistan with the exception of those laid down under rule 13.

(f) The killing of Brown Bears is prohibted in the Kajnag

area and in the whole of the Kashmir Valley.

(g) The killing of Herons is forbidden except on trout streams on a special permit from the Game Warden.

(h) The killing of monkeys of all kinds is forbidden. (i) The following are the Game Reserves under the Game

Preservation Department:—

Shooting in them shall be allotted on application to officials stationed in Srinagar to residents whose business or work lies in Srinagar and to visitors also in special cases. No allotment shall be valid without a permit which must be obtained beforehand and which must be handed over to the responsible Game or Forest official on demand. No grazing, cutting of wood or grass, habitation and traffic shall be permitted in these reserves.

Achhabal Rakh;

(2) The Ovra Rakh near Pahalgam:

(3) The Chatargul Nullah in Sindh Valley;

(4) The Dara area;

(5) The Nishat, Brain, and Chashma Shahi basin;

(6) The Wungat Rakh in the Sindh Valley;

(7) Khandi and Kharus Nullahs in the Uri Tehsil the lower boundary of which is the new road to the Hajipir;

(8) The Pampur and adjoining thils of Kranchu-cum-

Sondahar and Mænboog;

(9) Mir Gund Jhil; and

(10) The Kajnag and Kafirkund areas including the Salkhala, the Moji and the Shamashberry Rakhs.

Note.-1. All shooting from the high grounds, enclosing the jhils in (8)

is forbidden.

2. The special permits shall be issued by the Game Warden for fixed dates only and for not more than three days in any individual cas for big game shooting.

7. The possession of unlicensed guns, firearms and ammunition as well as of all nets, snares or other appliances for the express purpose of taking birds or game animals is illegal.

Explanation.—Unlicensed gun, firearms and ammunition means the gun, firearms and ammunition in the possession of a person who shoots game birds and animals without a

shooting licence or a special permit.

8. The sale or export for sale of the pods of Musk Deer and of the heads or skins of the Game animals mentioned in rule 5 is prohibited. The sale of the skin of Black Bear and Leopards and other vermin is allowed if killed by licenceholder or other authorised persons.

9. Where any person who does not hold a shooting licence is found in possession of any game or parts of game recently captured or killed, the Court may presume that he

has captured or killed such game illegally.

10. The breeding season of Chakor, Patridges and Pheasants is considered to extend from March I to September 30 (inclusive), that of Geese, Duck and Teal from April 15 to September 15 and that of Snipe from April 1 to August 31 (inclu-During the season thus defined no one shall destroy, net or capture in any fashion, any of these birds, nor shall any person sell any such birds during the breeding season. Taking of eggs of game birds is strictly prohibited.

11. (a) The shooting season for Chakor, Partridges and Pheasants is from October one to the last day of February, for wild fowl (Geese Duck and Teal) from September 16 to April 14 inclusive and for Snipe from September 1 to March 31. No wild fowl or any of the game birds herein mentioned may be captured by nets, snares, lines with hooks, and by the method known as Kakao Putta or any other similar device.

(b) The shooting season for Kashmir Stag shall extend from September 15 to March 14. The remainder of the year

is a close season.

12. The following are sanctuaries under the Game Preservation Department. No shooting, grazing, cutting of wood or grass, habitation or traffic is permitted in them:-

(i) Aijas Nul ah and Jhil in the Bandipur District.

(ii) Khushmul and Yimu basins in Baltistan.

- (iii) The Rajparin and Bewa basins in the Nowbug District.
- (iv) Soomjan and the Sapphire Mines Nullah in Kishtwar.
 - (v) Askor Nullah in Randu Baltistan.

(vi) The old Rakh Chashma Shahi.

'(vii) Pond near Sri-Gouri Shanker in Kishtwar.

(viii) The Shankracharya hill from Gagribal point upto

and including the basin above Pandrathan.

13. The following Nullahs in Baltistan viz., Alchor and Hoshpa, Nurh and Ghoru, Turmic, Tsuri and Bragicha are open for allotment under the following restrictions:-

Each Nullah will be limited to one gun for the first period, i.e., April 15 to July 14 and one gun for the second period i.e.

July 15 to October 15.

Special permits will be issued for these Nullahs by the Game Warden without which no licence will be valid for shooting in them.

Guns for the first period will be allotted by priority of application on arrival in Kashmir, for the second by application from any place.

Each gun will be limited to two Ibex and two Markhors

only in these Nullahs.

- 14. The State reserve to themselves the right to close any Nullah, Jhil, or place at any time during the season for State purposes or on the representation of the Game Warden, that the Nullahs, Jhil or place in question has been too heavily shot or for any other reason. The Game Warden is further authorised under this rule to take immediate action if he is satisfied that it is necessary reporting the step taken to the Government.
- 15. Licences to shoot big and small game, without which no person is permitted to shoot or to proceed in search of game, will be granted as follows:-

Added vide Council Resolution No. 12, dated 20th September 1924, published in Government Gazette dated 3rd Maghar 1981.

I. A licence for which Rs. 175 will be charged in force from March 15 to November 15, permits the holder to shoot in the Nullahs and districts which are open for sport, the following number of animals only:—

| Markhor of any variety in | | | | I |
|----------------------------|-------|---|------------|-------|
| Ibex (of which 2 only in I | Ladak | | _ | 2 |
| Ovis Vignei (Sharpu) | | | Serow | 4 |
| Ovis Hodgsoni (Ammon) | | | Brown Bear | 2 |
| Ovis Nahura Burhel | | | Tehr | 4 |
| Tibetan Antilope | | 3 | Goral | 4 |

Also small game subject to rules 10 and 11 above upto November 15 and Pigs, Black Bears and Leopards, without limit.

II. A licence of the vlaue of Rs. 55 will permit the holders to kill Black Bears, Leopards and Pigs without imit from March 15 to November 15 inclusive.

III. A winter licence, for which Rs. 105 will be charged will permit shooting big game, from November 16 to March 14, as under:—

| Markhor any variety | | 2 | Kashmir Stag | I |
|---------------------|--|-------|--------------|-------|
| Ibex | | 2 | Serow | I |
| Sharpu | | 2 | Tehr | 3 |
| Burhel | | 3 | Brown Beer | 2 |
| Tibetan Antelope | | 3 | Goral | 3 |
| Tibetan Gazelle | | I | • • | |

Also small game (subject to rules 10 and 11) permitted under licence V and Pigs, Black Bears, Leopards and other Vermin without limit.

IV. To meet the special circumstances of Baltistan, Ladakh, Astore and Gurais, a licence of the value of Rs. 50 in force between November 16 and March 4, will entitle the holders to kill:—

(a) In Baltistan and Lower Ladakh i.e., below Khalsi on the Indus: Ibex 2, Sharpu 2.

(b) In upper Ladakh i.e. above Khalsi on the Indus:

N. B.—The licences (a) and (b) are issued subject to the conditions of Ladakh Rule No. 2 and they do not permit the holder to shoot within the blocks closed under the rules.

Burnit Sharpu 4.

(c) In Astore and Bunji: Sharpu 4.
 (d) In Gurais Valley: Ibex 1, Brown Bear 1 and Black

Bear 2.
Also small game as laid down under licence V (a) and

all Vermin.

These licences will be strictly limited in numbers and issued in special cases only by the Game Warden on the per sonal recommendation of the British Joint Commissioner Leh or the Wazir-i-Wazarat concerned.

No person can hold licences III and IV at the same time.

V. (a) A small game licence for which Rs. 70 will be charged will enable the holder to shoot Pheasants, Chikor, and Partridges from October I to the last day of February inclusive, Geese, Duck and Teal from September 16 to April

14 inclusive and snipe from September 1 to March 31.

This licence does not entitle the holder to shoot within any forest inhabited by big game, nor within any big game reserve under the Game Preservation Department unless for Pheasants in which case a permit will be issued and guns and ammunition used for small game shooting only will be allowed to be taken.

(b) A small game licence for which Rs. 42 will be charged, will enable the holder to shoot as provided under licence V(a) above but for a period of two months only to run from the date of issue of the licence.

(c) A small game licence, for which Rs. 70 will be charged will enable the holder to shoot as provided under licence V(a) above and aslo to use punt and long guns for the purposes of killing wild fowl.

(d) A small game licence for 15 days for which Rs. 15 will be charged will enable the holder to shoot as provided

under licence V (a) above.

Note.-1. Sportsmen holding any of these licences may kill Ram Chikor between the date of September 16 and May 1st. Pigs on the left bank of the Jhelum above Srinagar and on both sides of the river below Srinagar; but outside a 5 miles limit of any of the State big game reserves. Also Leopards including Ounces, Wolves, Foxes, Martens and other vermin.

No sportsmen may take out more than one of the above licences (I) to (V). VI. A special licence, for which Rs. 73 will be charged, which shall be repeated in the case of Musk Deer only, will enable the holder to kill one Musk Deer, or if a holder of Rs. 175, No. 1 licence, or the Rs. 105, No. III licence to kill one specimen extra of any one of the animals laid down in the licence in question except Markhor, Ovis Ammon and Goa.

Any sportsman who shall kill a greater number of the game animals than is permitted under the terms of his licence, will be called upon to take out a number VI Rs. 70 licence for

each animals so killed.

VII. A trapping licence of Rs. 40 will be issued for trapping all vermin. Only six traps will be allowed on each licence.

The State reserve to themselves the right to refuse to issue any of the above licences.

When a livence hus once been taken out no refund is permitted.

Exchange of licences is allowed as under:

I. A Rs. 55 No. II licence may be exchanged for a Rs. 175 No. I licence on payment of the difference, provided that the applicant has not previously been in search of, or shot, any of the animals specially included under No. I list.

2. A Rs. 70 No. V(a) licence may be exchanged for either a Rs. 175 No. I or Rs. 150 No. III on payment of the

d.fference.

3. A Rs. 42 No. V (b) licence may be exchanged for a Rs. 70 No. V(a) licence on payment of the difference.

4. A Rs. 15 V (d) licence may be exchanged for either

Rs. 70 V (a) licence or a Rs. 42 V (b) licence.

Explanation.—Exchange can be made only before and

not after the expiry of licence.

16. No one shall take service as a regular shikari with sportsmen until he has been registered by the Game Warden and granted a licence which shall be renewed annually.

17. Employers of shikaries are advised to insist on the shikaries producing their registration forms, as these show any adverse entries which have been made against them.

Any sportsman wishing to employ a villager or a local man as shikari is requested to communicate his name to the Game Warden for registration in order that he may become

liable to the same penalties as the regular shikuries.

18. (a) Whoever, being subject to the jurisdiction of the Kashmr State Courts, commits, abets or attempts to commit a breach of these rules or the special rules for Astore, Kajnag or Ladakh issued under rule 2, shall be punished on first conviction with imprisonment of either description for a te m which may extend to one month or with fine which may extend to Rs. 25 or with both and on second conviction with imprisonment of either description which may extend to tour months or with fine which may extend to Rs. 100 or with both, and if the offence is one under rule 6 and 12, he shall be punished on first conviction with imprisonment of either de cription which may extend to three months or with fine which may may extend to Rs. 100 or with both, and on second conviction with imprisonmen of either description which may extend to four months, or with fine which may extend to Rs. 200 or with both.

(b) In addition to any punishment awarded under (a) above, an offender shall be liable to forseit the gun or other weapons, and dog used in connection with his offence, as well

as all trophies which may be the result of the latter while if a shikari, he shall also be liable to have his licence forfeited for one year, or for such further period as may be considered

necessary.

(c) If any person who is not subject to the jurisdiction of the Kashmir State courts, commits an offence against these rules or the special rules for Astore, Kajnag and Ladakh issued under rule 2 he shall be liable to forfeit his licence, and also his gun, weapons, dogs and trophies as provided in (b) above, and his case shall be reported immediately to the Resident for disposal in such manner as he may think fit.

(d) Any shikari, watcher or other Government official who shall fail to report any infringement of the Game Laws on its being brought to his notice or being a shikari who having been suspended for misconduct under rule 18(b) above shall take service with sportsmen, shall be liable to be dealt

with under rule 18 supra.

- (e) Any watcher or employee of any Department of His Highness' Government, who shall make use of his position to levy bribes in any form, or otherwise to oppress or intimidate any person under threats of punishment under the Game Laws, shall be liable to the penalties laid down in this rule.
- (f) Any person who is found grazing his cattle in any of the G. P. D. Game Reserves or sanctuaries closed for grazing, will be allowed to compound by paying a fee not exceeding a rupee per head of cattle or a total of Rs. 50 in any one case or he shall be punished under this rule. The Game Warden, Assistant Game Warden and Forest officer of the rank of Forest Ranger and above are empowered to compound such cases.

Note .- Definition of "Cattle" as in Forest Law Manual of the State i. e., Cow

Bulls, Horses, Sheeps, Goats etc., etc.

The following dimensions are laid down as a definition of shootable heads permitted to be killed under the terms of the Kashmir Game Laws:-

| * | | | I | nches. |
|---------------|----------|------|---|----------|
| Markhor (of a | ny varie | ety) | | 45 |
| Ibex | | | | |
| Ovis Ammon | | | | 35 38 |
| Sharpu | | | | 24 |
| Burhel | • • | | | 23 |
| Tibetan Antel | ope | | | 22 |
| Tibetan Gaze | | | | 10 |
| Kashmir Stag | •• | 35 | | |

Shikaries will be held equally responsible with their employers that animals under the above dimensions are not shot. No accidents will be recognised. Sportsmen shooting undersized heads will be called upon to take out an extra special licence No. VI of Rs. 70 for each under-sized head shot.

Records are kept by the Game Warden in the interest of sport, of all heads of exceptional size, killed in Kashmir. Sportsmen are earnestly invited to co-operate with the Game Warden and to send him any such exceptional heads they may obtain for measurement and entry in the Kashmir Big

Game Records.

20. (a) The practice of palming off on sportsmen old heads of tropies that have been killed by native shikaries being largely on the increase, sportsmen are asked to be very careful about accepting heads as their own unless they have been gathered by them or can absolutely verified as the identical animals they may have wounded. In all cases the head and jaw bone should be complete with the actual decaying flesh adhereing to the bones, and sportsmen should insist that other bones, skin, and feet should be produced with the head. Failing the above requirements the presumption is that the head is an old one and case should be immediately reported to the Game Warden.

Any attempt by a shikari to palm off such a head shall be considered to be a breach of rules punishable under section

18 supra.

In no case should rewards or money be given to shikaries or villagers for heads brought in by them. The purchase of heads is a direct incentive to the encouragement of poaching and the killing of animals for sale to sportsmen.

(b) The attention of sportsmen is called to visitors Rule 26. Sportsmen are requested on no account to leave their rifles with their shikaries on quitting a Nullah, nor to make presents of or sell firearms or ammunition to His Highness' subjects.

No shaikri is permitted to possess any rifle for which he has not taken out a licence and every shaikri is warned that if he is found in possession of an employer's rifle, after the employer has left the shooting ground, he will be dealt with under

rule 18.

(c) The practice of giving rifles to shikaries for purpose of following wounded animals, or of offering rewards for the same to local men or others, is not permitted, as it is a direct incentive to poaching and killing animals which cannot be rightly claimed by sportsmen as their own.

21. (a) REWARDS.—Any person or persons giving such

bona fide information as shall lead to conviction under these laws shall be entitled to a reward which may at the discretion of the Magistrate trying the case extend to the full amount of fine inflicted.

(b) Employees of the Game Preservation Department or any other State employees who shall give information under para (a) supra, shall not be debarred from receiving above re-

wards.

(c) The Magistrate trying the case will have the power to grant the above rewards (a) and (b) supra, on his authority

without any reference to the Government.

(d) The following scale of rewards will be paid by the Game Warden for all vermin killed by licence-holders employees of the Game Preservation Department and by any other persons specially authorised to kill them:-Rs. As.

 Leopards (snow and common) 10 0 do. .. Cub Do. (Skin to remain the property of the killer if a licence-holder.) 2. Wolves, Wild dogs, Lynx, etc. 10 0 3. Carrion, Crow and Carmorant and other Fish Vermin

NOTE.-A reward of Rs. 5 may be paid at the discretion of the Game Warden

for Otters doing damage on trout streams.

In all cases the reward will be paid on the skins being brought or sent before being tanned to the Game Warden by the killer. They will then be stamped under his authority and returned to the owner if a licence-holder. In the case of the employees of Game Preservation Department they will be retained and sold by the Department for their benefit while in the case of specially authorised persons for the benefit of the Game Preservation Department.

Skins brought in by the Srinagar Skin Merchants will not

be recognised for rewards.

22. Several cases of accidental killing of cows and cattle by sportsmen have been brought to the notice of the Darbar. It is hereby notified under the orders of His Highness the the Maharaja Bahadur, that all shooting in State territor es is forbidden after sunset.

23. Licence-holders who, by the conditions of a licence, are enjoined not to kill more than a special number of animals, are requested to return the licence, on the expiry of its period, to the Game Warden with a statement showing the number of animals killed by them, filled in and signed.

24. Sportsmen are particularly requested not to give presents to the Game Preservation Department servants, and to report any irregularities on their part to the Game Warden. Servants receiving presents from sportsmen will be dismissed.

25. Sportsmen are warned that they must report to the Game Warden all cases of serious injuries received by shikaries, beaters and other State-subjects (with full description and address) whilst employed in beating etc., in their service together with full report on the circumstances of the occurrence, and of any compensation or money reward pad by them to the injured person or his relatives.

Disregard of these rules shall render the offender liable to forfeiture of his licence or refusal to issue any licence on any

future occasion under rule 14.

Applications for licences may be made to the Game Warden, Srinagar to whom all other communications should be addressed, either personally or by letter.

NOTIFICATION.

Game Laws and Fisheries Act. extended to Jammu Province.

(Published in Government Gazette dated 11th Jeth 1991).

His Highness the Maharaja Bahadur in Council has been pleased (vide Hon'ble Prime Minister's endorsement No. G.B. 661 dated 5th March 1934) to accord sanction to the extension of the Game Laws and the Fishery Act to the whole of the Jammu Province with the following Special Provisions:—

A. CLOSE SEASON.

To prevent the indiscriminate shooting of Small Game, close Seasons as specified below shall be enforced:—

1st April to 14th September

For Bustard, Brahmani Duck, Jungle Fowl, Partridges (Grey and Black) Snowcock (Ram Chikor), Tragopan, Kalij, Chir, Koklas and Munal Pheasants, Green Pigeons, Hill Pigeons and Woodcock.

ist March to 3ist July ist March to 14th September

1st July to 14th September

1st April to 14th September

.. For Sand Grouse.

.. For Chikor

. For Quail.

.. For hares, Wild-fowl and Snipe.

B. Prohibitions.

The following animals of Game being rare in the localities mentioned against each, their shooting is strictly prohibited:-

Barasingha ... In Ramban.
Serow ... In Bhadarwah.

Cheetal

Musk Deer ...

Females of Barking Deer
Females of Thar ...

Females of Gural ...

Peacock ...

Heron ...

Nilkanth ...

C. LICENCES FOR SHOOTING AND FISHING SHALL PE CHARGED AS BELOW:—

Game is more or less similar to that in the adjoining tracts of the Kashmir Province and the Kishtwar Tehsil) the fees for Shooting Licences shall continue to be the same as for those areas. For the rest of the Province, excluding closed areas which will be subsequently notified, the fees shall be:—

Rs. 20 for big game (Shooting and Hunting for Season

1st January to end of December).

Rs. 5 for small game (Shooting, Hawking and Snaring for Season).

These Licences shall not be convertible into the corres-

ponding Licences for Kashmir.

2. For the purpose of these licences, Ramban, Bhadar-wah, and Kishtwar Tehsils shall not be treated like the Kashmir Province. Thus the fees for the whole of the Province will be:—

(a) Mahseer Fishing Licences.—(For the whole of the Jammu Province including Tangrot except closed waters

which will be subsequently notified).

Rs. 30 for fishing with Net for Season. (1st January to end of December).

Rs. 30 for fishing with Rod for Season as above.

Rs. 20 for fishing with Rod for 10 days. Rs. 3 for fishing with Rod for one day.

These Licences cover coarse fishing also as in (b) below:—

(b) Coarse Fishing Licences—Rs. 20 for fishing with Net for Season (1st January to end of December).

Rs. 10 for fishing with Rod for Season as above.

Rs. 5 for fishing with Rod for 10 days. Rs. 2 for fishing with Rod for a day.

These licences shall be convertible into the Mahseer Fising Licences as in (a) above, on payment of difference.

D. SANCTUARIES AND RESERVES.

(a) No new Sanctuaries other than the places sacred to different communities will be created at present.

The following are declared as Game Reserves in which

shooting will be allowed on Permit only:-

All the Rakhs under the Revenue Department.

Shashehra Forest—an area near Rajouri (in the Mirpur Forest Division).

Jhanlanger Forest-an area near Reasi (in the Reasi

Forest Division).

Jasrota Forests:— an area near Kathua (in the Billawar Forest Division).

(b) Portions of the rivers sacred to any community shall remain as sanctuaries. These will be notified in due course.

Consequent on this extension of the Game Laws, the Game Warden shall have jurisdiction over the whole of His Highness'

Territories, Jammu and Kashmir.

The Divisional Forest Officers shall enforce these rules in their respective Division, while the Revenne Officials shall similarly enforce them outside the Forest areas.

APPENDIX I.

Special Rules for Astore Shooting District.

1. The Astore Shooting District for the purpose of these Definition of area now rules, is considered to be the catchment area of the streams flowing from the Kamri and Burzil passes in the direction of Kashmir to their junction above Astore. Beyond this the catchment areas of the streams flow into the Astore River on both banks till its junction with the Indus at Ramghat. All Nullahs running into the Indus below Ramghat are closed and no persons are permitted to travel or shoot below this point, which is held to be the boundary of Chilas territory. Above Ramghat the Nullahs on the

left bank of the River Indus as far as the junction of the Gilgit River and above this, the whole of the country on both banks of the Indus which is now included in the Bunji Niabat, as far as the village of Bulatchi (including the Bulatchi Nullah) on the left bank of the river, and the camping ground at Shangus on the right bank.

2. Sportsmen, in view of the serious political objections against their entering Chilas, are warned that they must in no case cross or even approach the watershed in the direction of, or trespass, in Chilas territory. If any inconvenience arises through disobedience of these orders, the whole area thrown open will be closed absolutely.

3. Mir Malik is reserved for the use of

Olose Nullahs. the garrison at Rattu Camp.

4. In consequence of these rules, the routes leading into the Astore District from Foalwein and Rheyl (or Kel) through Mir Malik remain closed.

5. Sportsmen must bring with them the whole of their cooly and pony transport from Kashmir, as none will be available in the Astore Shooting District. If through any unforeseen cause, necessity should arise for extra coolies or ponies, application should be made, stating the special circumstances of the case to the Tehsildar at Astore, who will make necessary arrangements.

Nullahs must sign a certificate to the effect that they agree to take with them all necessary transport and supplies for themselves and their followers, for the period they are in the Astore Districts, as neither can be found there, also that they understand

tricts, as neither can be found there, also that they understand that there is a prohibition against ladies accompanying them

beyond the Kamri and Burzil passes.

The bazar shops at Astore and Bunji will furnish supplies for the followers, and meat, as far as they are available, at the fixed local rates, but sportsmen are warned that the quantity of such supplies is extremely limited and they are advised, therefore, not to count on obtaining such supplies of any kind. If they are available and the villagers are willing to sell, sportsmen are requested to see that payments are made in their own presence to the actual vendors.

7. The local authorities are authorised to call upon all Local authorities' power persons travelling in the district to produce

regarding permits. their permits.

8. After entering the Astore Shooting District, as above defined, European sportsmen will be subject to the same rules

and regulations as hold good in other parts of the State.

9. The Jammu and Kashmir Game Laws will apply in The Jammu and all respects to al sportsmen shooting in Kashmir Game Laws to the Astore Shooting District.

Name of sportsman to shoot in the Astore Shooting District will be notified to the Revenue authorities, Astore. Shoot in the Game Warden to the Revenue authorities, Astore.

11. No Kashmir shikari except those holding the Game Regulation regarding Warden's Certificate will be permitted to Shikari.

enter the Astore Shooting District.

Particulars as to local shikaries can be obtained on application to the Tehsildars at Guris and Astore and Naib-Tehsildar at Bunji.

12. (1) The Astore Shooting Season is divided into two

periods:—

First period—15th April to 14th July. Second period—15th July to 15th October.

Permits for the 1st period will be granted by priority of application on arrival in Kashmir. Applications for the second period may be made in advance any time on or after January 2nd and will be granted in the order of their receipt.

Application for the permits should be sent to the Game

Warden.

Ten guns will be allowed during each period of which six only will be permitted to shoot Markhor. Each of the six guns will be allotted a particular Nullah in accordance with priority of application, and this Nullah only must be shot in for Markhor.

(2) The Nullahs which will be available for shooting as above in 1937-38 will be (1) Dashkit, (2) Mushkin, (3) Abadibur (4) Burmai (5) Mayadas (6) Shaltar (7) Burduch and (8) Garey.

All other Nullahs on the right bank of Astore River below Astore as far as Bunji and all other Nullahs which flow into the Indus, above Bunji and which are in the Bunji Tehsil

[as laid down in rule (1)] will be closed.

The Nullahs flowing into the Kamri River, except Mir Malik, and those on the left bank of the Astore River below Astore and on both banks of river above Astore, will be available for any of the ten guns holding Astore permits for the shooting of Ibex, Sharpu and Red Bear.

(3) The Shooting Season of small game in the Astore District will extend from September 1 to the last day of Feb-

ruary, remainder of the year will be close season.

13. Sportsmen are warned that the employment of coolies to cross the Burzil Pass cannot be insisted on during the months of March and April and is entirely voluntary. If coolies are willing to take service and volunteer for the work, the same charges will be fixed as have been laid down in similar cases in Kashmir, viz., 10 annas a march, and these rates will extend from Minimurg to Chilum Chowki. Further, the arrangements, for the crossing of the Burzil Pass should be left to the coolies themselves who, being local men are acquainted with the difficulties of the road and the climatic conditions that have to be met.

14. The date of permit issued to sportsmen will be the date on which they are permitted to leave Bandipur to cross the Burzil Pass, and will be strictly enforced. Sportsmen or travellers will start at intervals of not less than two days interim, and under no circumstances will they be allowed to lessen the interval, or pass each other on the road. Sportsmen are requested to carry out the spirit and letter of this rule 2, any infringement of which will result in the curtail-

ment of shooting during the first period.

APPENDIX 2.

Special Rules for Kajnag and Kafir Kund areas inc'uding Moji and Shamashberry Rakhs.

The Kajnag and Kafir Kund is considered to be the range of mountains and all off-shoots therefrom, from Baramulla to Domel, the watershed of which flows into the area drained by the rivers Pohru, Jhelum, Ginger (or Karnah) and Kishenganga.

2. The Shooting Season, for Markhor in the Kajnag and Division of Shooting Kafir Kund areas as defined in rule I is divided into two periods i. e. first period—15th April to 14th July, 2nd period—15th July to 15th Octo-

ber.

The remainder of the year will be close season.

Six guns only will be permitted during each period. Each of the six guns in each period will be allotted a particular Nullah in accordance with priority of application, and this Nullah only must be shot in for Markhor. The six Nullahs which will be open for shooting in 1937-38 will be:—

(1) The Limber including the Gretnar and the Bhimiar branches, (2) Goojar (3) Miadan, (4) Islamabad, (5) the Domel

and Riperday beat in Kathi, (6) the left side of Moji Nullah comprising all grounds on the left bank of the river from its source to the mouth of Nullah including.

Gabdori and Kunirawal Nullahs in the Shamashberry the rest of the Shamashberry range is an open area for shooting

Red Bear.

N. B.—Sportsmen will be permitted to march to and occupy their Nullahs on or after the 10th of April and 10th July respectively, on the understanding

that they do not commence to shoot before the 15th of that month.

Permits for the 1st period will be granted by priority of application on arrival on or after January 2nd in Kashmir. Applications for the second period may be made in advance any time and will be considered in the order of their receipt.

Applications for permits should be sent to the Game War-

den, Srinagar.

- Rules for Shooting in the Winter Season.

 Rules for Shooting in the Winter Season.

 Rules for Shooting in licences will be permitted to shoot big game (other than Morkhor and Red Bear) as well as small game, in the Kajnag and Kafir Kund areas from November 15th to March 14th. Applications for special permit for the purpose should be made to the Game Warden.
- 4. No grazing or collection of Kuthroot wood etc., nor introduction of dogs, is permitted in Kajnag and Kafir Kund or in the Shamashberry and Salkhala ranges above the boundary pilars demarcated in 1903 and 1907, respectively. If any person is found grazing cattle in any of the Game Laws Sanctuaries or Game Reserves closed for grazing he will be liable to a fine of one rupee per head.

5. The shooting of Red Bears is temporarily closed in the Kajnag and Kafir Kund Districts but is permitted in the Sham-

ashberry.

APPENDIX 3.

Special Rules for Ladakh Shooting Dis'rict including Changchanmo area.

1. All sportsmen shooting in Ladakh are required to have in their possession the Ladakh Special Permit as laid down under Game Laws Notification Rule 3. These will be issued by the Game Warden on their signing a certificate to the effect that they have no intention of crossing the frontier either into

Chinese Turkistan or Tibet. For the purpose of the rules the Ladakh District will be held to commence:—

(a) At Bot Kharbu.

(b) At the Chorbat Pass.

(c) At the village of Hundar on Shyok river.

N. B.—The above rule applies to sportsmen only, should they wish to be accompanied by their wives or other persons who have not a shooting permit, application for a special permit must be made to the British Joint Cammissioner through the Game Warden.

2. The Ladakh Season is divided into two periods, i.e.,
Division of Shooting first period—15th April to 14th July, 2nd

Senson. period—15th July to 15th October.

No shooting is permitted in either the Ammon or Sharpu blocks except during the above periods.

Permits for the 1st period will be issued by the priority of

application on arrival in Kashmir territory.

Permits for the 2nd period by priority of application from any place on or after January 2nd in each year. Applications for permits should be sent to the Game Warden, Srinagar.

Sportsmen who have registered their names for the 2nd period and who are unable to avail themselves of the permits are requested to inform the Game Warden immediately so that the blocks may be allotted to other applicants.

N. B.—Except in special cases which must be referred to the British Joint Commissioner, Ladakh guns for the first and second periods will not be permitted to enter the Ladakh Shooting District, as above laid down, before the 15th April

and 15th July respectively.

Jefinition of areas now open and restrictions as mon) will be 8 in each period, and Sharpu to guns.

To in each period. Of these 3 only in each period will be permitted to shoot in the Changchanmo area.

Fixed blocks will be allotted to each sportsman by priority of application. Each sportsman will be allowed I Ammon

block and also I Sharpu block.

Those permitted to shoot in the Changchanmo area, may be granted an Ammon block in addition to the Changchanmo area.

N. B.—The Game Warden reserves to himself the right to allot the Ammon block in the Changchanmo area to one of the guns holding Changchanmo permit

in each period.

The remaining Sharpu blocks will be available for other sportsmen by priority of application, vide rule 2. No sportsman may shoot any species of game in a block allotted to another gun.

All the rest of the country not included in the blocks except the Changchanmo, may be shot over by any sportsman

holding a Ladakh Permit.

In addition to the block No. 13 the stock Nullah (not Shang) is available for holders of Rs. 50 special winter licence for Ladakh.

The following blocks have been provisionally made in the Ladakh District.

A-Ovis Ammon.

(1) The tributaries of the Indus from Dumchok to Koyul.

(2) The watershed of the Koyul river as far as its junction with the Indus, below this all tributaries, of the Indus, as far as big bend of the river at Dungti.

(3) The Hanle river has in as far as South of Hanle

Monastery.

(4) The Hanle river basin South of (3).

(5) The tributaries of the Indus between the Hanle river and the Puga river.

(6) The country lying between 3 and 4 on the East,

5 on the North, and 6 on the West.

(7) The basin of the Salt Lake and tributaries of the Indus between (and including) the Puga river as far as the water of the Tiri Foo.

(8) The basin of the Tsomeriri lakes and the Phirsi Nullah.

- (9) The Tiri Foo and the country lying to the North bounded by the Indus on the North and East, the Leh Kulu Road on the West and the watershed of Tsokr Camo plain on the South.
 - (10) The watershed of the Zara and Rukchen rivers.

(II) The watershed of the Marka river.

(12) The Kharnak Nullah.

(13) The triangular area lying between Choosbal on the North, the frontier on the East, the watershed of the Choosbal river and Chamatnag Foo on the West and the Indus on the South from Chamatnag to Dungti.

(14) The catchment area of the Pangong Lake to the North and West of 13 and the 14, and the Tangse river basin.

(15) The Changchanmo.

B.—SHARPU.

- (1) The Igu and Chimre Nullah.
- (2) Nang and Sabu.

- (3) Phyang and Tara.
- (4) Umla and Nimo.
- (5) Bazgo and Myel.
- (6) Likir and Suspul, and Waleh-Drokpa.
- (7) Hemis-Shupka, Nurla and Khalsi.
- (8) Damkar and Hanu.
- (9) Hemiskot and Wanla.
- (10) Iluchi and Lardu.
- (II) The watershed of the Zaskar and Marka ri ers below, but including the Skew Nullah.
 - (12) Rumpakh.
 - (13) Stock and Shang.
 - (14) Masho.
 - (15) Shera and Lokchey.
 - (16) Kamdok.

Of the above blocks the following will be available for shooting in 19—.

Ovis Ammon.

Blocks 2, 4, 5, 6, 8, 10, 11, 13 and 15.

SHARPU.

Blocks I, 4, 5, 6, 8, 9, II, I2, I4, I5 and I6.
The killing of Sharpu is forbidden on the Maidan lying to the North and South of the Treaty Road between Likir Nullahs and Buzgo.

4. Sportsmen obtaining permission to shoot in Chang-Rules regarding shoot- chanmo should apply for a special Paring in Changchanmo area. wana from the British Joint Commissioner Ladakh without which no transport will be obtainable to cross the Marsemik La.

5. Sportsmen are warned that they are expressly forProhibition regarding bidden to cross the frontier of Chinese crossing the frontier. Turkistan or Tibet without special permission from the Government of India. The Frontier villagers are strictly forbidden to provide transport beyond the limits of Kashmir territory, unless the employer has a special permit.

6. The Jammu and Kashmir Game Laws will apply in all respects to sportsmen shooting in the

mir Game L.ws, to ap- Ladakh Shooting District.

ply.

The names of all sportsmen obtaining permiss on to shoot in the Ladakh Shooting Dis r ct will be notified to the British Joint of British Joint Commissioner.

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THE MUNICIPAL ACT, 1970.

(Sanctioned by His Highness the Mahuraja Sahib Bahadur vide Chief Minister's No. 4993, dated 14th October 1913.)

Whereas it is expedient to make better provision for the administration of Municipalities in the Jammu and Kashmir State, it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (a) This Act may be called the Jammu and Kashmir Title, Extent and State Municipal Act, 1970.

(b) It extends to the territories of His Highness the

Maharaja Sahib of Jammu and Kashmir State.

(c) It shall come into force on such date as His Highness the Maharaja Sahib may, by notification in the Jammu and Kashmir Government Gazette, appoint in the behalf.

2. (a) This Act repeals Municipal Act No. 16, of Sam-

vat 1946. Repeal.

- (b) But all Municipal limits defined, appointments, rules, regulations, bye-laws and orders made, Saving Clause. notifications and notices issued, taxes, tolis, rates and fees imposed or assessed, contracts entered into and suits instituted under the said Act shall, so far as may be, be deemed to have been respectively defined, made, issued, imposed or assessed and entered into and instituted under this Act.
 - 3. In this Act, unless there is something repugnant in the subject or context:-Definitions.

(1) "Municipality" means any local area declared by or under this Act to be a Municipality.

(2) 'Bui.ding' means any house, hut, out-house, shed, super-structure and stable whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever and ncludes a wall and a well.

(3) "Bye-laws" and "Bye-law" mean respectively the regulations made or to be made by the Committee at a special meeting under the authority of this Act and any one of such

regulations duly sanctioned by the Government.

(4) "Occupier" includes an owner in actual occupation of his own land or building, and also any person for the time being paying or liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which the word is used; for the purposes of Chapter V, occupier shall include hotel-keeper, lodging house-keeper, and any owner whose premises are let to more than one tenant.

(5) "Erect" and "Re-erect" any building includes:—

(a) any material alteration or enlargement of any building;

(b) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation,

(c) the conversion into more than one place for human habitation of a building originally constructed as

one such place;

(d) the conversion of two or more places of human habitation into a greater number of such places;

(e) such alterations of building as effect an alterattion of its drainage or sanitary arrangements, or materially effect its security;

(f) the addition of any rooms, buildings, out-houses,

or other structures to any building, and

(g) the construction in a wall adjoining any street or land not belonging to the owner of the wall, of a door opening on to such street or land.

(6) "Rules" and "Rule" mean respectively the rules made or to be made and notified by the Government under

the authority of this Act and any one of such rules.

(7) "Committee" means Municipal Committee estab-

lished by or under this Act.

(8) "Owner" includes the person for the time being receiving the rent of land or buildings or either of them, whether on his own account, or as agent or trustee for any person or society, or for any religious or charitable purpose, or who would so receive the same if the land or building were let to a tenant.

(9) "Public street" shall mean any street, road, bridge, thoroughfare or passage, over which the public have a right

of way and includes drains.

(10) "Vehicle" shall include bicycles, tricycles, and automotor cars, and every wheeled conveyance which is used

or capable of being used on a public street.

(II) "Boat" shall mean any boat used or capable of being used on water as a means of conveyance or habitation and shall include steam or motor launches.

CHAPTER II.

CONSTITUTION OF MUNICIPALITIES.

4. (I) The Government may, by notification, declare any Procedure for constitution or group of towns together, a Municitating Municipality. pality under this Act.

(2) Every such notification shall define the limits of the

local area to which it relates.

(3) A copy of every notification under this section with a vernacular translation shall forthwith be affixed in some conspicuous places within that area and published in the Jammu ane Kashmir Government Gazette in three consecutive issues.

(4) The Government may, by notification, direct that all or any of the rules made under this Act shall, with such exceptions and adaptations as may be considered necessary, apply

to the local area constituted as Municipality under this sec-

tion, and such rules shall forthwith apply to such Municipality.

(5) A Committee shall come into existence at such time as the Government may, by notification, appoint in this be-

- 5. The Government may, by notification, and in such other manner as it may determine, include Notification to alter within a Municipality any local area in the limits of Municipality. vicinity of the same and defined in the notification.
- 6. The Government may, by notification, and in such other manner as it may deem fit, exclude Notification to excluding area from Munici-pality. from a Municipality any local area comprised therein and defined in the notification, and this Act shall forthwith cease to apply thereto.

CHAPTER III.

COMMITTEES.

Constitution of Committees.

- 7. There shall be established for each Municipality, a Committee having authority over the Muni-Constitution of Comcipality and consisting of such number of mittees. members not less than 5, as the Government may fix in this behalf.
- Every such Committee shall consist of members appointed by the Government either by name Appointment and elec-tion of members. or by office, or of members elected from among the inhabitants in accordance with rules made under this Act, or partly of the one and partly of the other as the Government may, by notification, direct: Provided that, unless the Government shall otherwise direct, the elected members shall not exceed 'one-third of the whole Committee
- (1) If a member of Committee is appointed by office, the person for the time being holding the Terms of office of memoffice shall be a member of the Committee until the Government shall otherwise direct.
- (2) The term of office for which all other members of Committee shall be appointed and elected respectively, shall be fixed by the Government by rules made under this Act, and

^{&#}x27;A cle ar elected majority is provided vide Finance Minister's Press Note, published in Government Gazette dated 9th Assaj 1993.

may be so fixed as to provide for the retirement of members

by rotation, but shall not exceed three years.

(3) An out-going member, shall, unless the Government otherwise directs continue in office until the election or appointment of his successor is notified.

(4) An out-going member may, if otherwise eligible, be

re-elected or re-appointed.

10. Notwithstanding anything in the foregoing sections of this chapter the Government may, at any time, for any reason which it may Power of the Government over the constitution deem to affect the public interests, or at of Committee. the request of a majority of the electors, by notification direct,

(a) that the number of seats on any Committee shall

be increased or reduced;

(b) that any places on a Committee which are required to be filled by election shall be filled by appointment, if a sufficient number of members has not been elected;

(c) that a seat on any Committee which is then filled by election shall thenceforth, when vacant, be filled by ap-

pointment;

(d) that a seat on any Committee then filled by appointment shall thenceforth, when vacant, be filled by election;

(e) that the seat, of any specified member, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly, notwithstanding anything in this Act or in the rules made thereunder.

11. Any member of Committee, who may wish to resign,

may forward his writted resignation through Resignation of member the President of the Committee to the of Committee. Minister-in-charge, and on his resignation being accepted he shall be deemed to have vacated his office.

'12. (I) The Government may by noti-Power of the Governfication, remove any member of Commitment as to removal of members. tee:-

(a) If he refuses to act, or becomes, in the opinion of the Government, incapable of acting, or has been declared a bankrupt or an insolvent or has been convicted of any such offence or subjected by a criminal court to any such order as implies, in the opinion of the Government, a defect of character which unfits him to be a member;

(b) If he has been declared by notification to be disqualified for employment in, or has been dismissed from the public service and the reason for the disqualification or dismissal is

*Section 12 substituted vide Act X1 of 1990 published in Government Gazette dated 2nd Ohet 1990

¹Section 10 substituted vide Act XI of 1990 published in Government Gazette dated 2nd Ohet, 1990.

such as implies, in the opinion of the Government, a defect of character which unfits him to be a member;

(c) if he has without reasonable cause in the opinion of the Government absented himself for more than three consecutive months from the meetings of the Committee;

- (d) if, his continuance in office, is in the opinion of the Government, dangerous to the public peace or order;
- (e) if in opinion of the Government, he has flagrantly abused his position as a member of the Committee or has through his negligence or m sconduct been respons ble for the loss, or misapplication of any money or property of the Committee;
- (f) in the case of an elected member, if he has, since his election, become subject to any disqualification which, if it had existed at the time of election, would have rendered him inelligible under any rule for the time being in force regulating the qualifications of candidates for election, or if it appears that he was at the time of his election subject to any such disqualification; or
- (g) if, being a legal practitioner, he acts or appears in any legal proceeding on behalf of any person against the Committee; or on behalf of or against the Government where in the opinion of the Government such action or appearance is contrary to the interests of the Committee:

Provided that before the Government notifies the removal of a member under this section the reasons for his proposed removal shall be communicated to the member concerned and he shall be given an opportunity of tendering an explanation in writing

(2) A person removed under this section or whose seat has been vacated under the povisions of section 10 (e) or whose election has been declared void for corrupt practices or intimidation under the provisions of any rule made by the Government under section 146, or whose election the Government has under section 18 refused to notify, shall be disqualified for a period not exceeding five years.

13. (1) When the place of a nember of Committee appointed or elected is vacant, the Government was a ment may, but subject to the rules made under this Act fill his place by appoint-

ment, or election, as the case may be, of a new member.

(2) Every person elected or appointed to fill a casual vacancy, shall hold his seat for the time and subject to the conditions upon which it was tenable by the person in whose place he has been so elected or appointed, and no longer, but he may, if otherwise qualified, be re-elected or re-appointed. 11. Every Committee shall be a body corporate by the name of the Municipal Committee of its Municipality, and shall have perpe ual succession and a common seal, with power to acquire and hold property, both moveable and immoveable, and subject to the provisions of this Act, or of any rules made thereunder to transfer with the sanction of the Government, any property held by it, to contract and to do all other things necessary for the purposes of its constitution; and may sue, and be sued in its corporate name.

a Municipal Commissioner within the meaning of every enactment for the time being in

Member of Committee to be Municipal Commissioner.

President and Vice-President.

force.

'16. (1) The Government may appoint a President who will be paid from Municipal Funds, or it may appoint an official to be Honorary President. The appointment in the former case shall be on one year's probation, which will be followed by confirmation with the Government sanction, provided that satisfactory work has been rendered during the probationery period. The appointment of an Honorary President shall ordinarily be for a period not exceeding three years, which may be extended if the Government thinks fit.

(2) The Government may appoint, from time to time, one Appointment of Vice. or two of the members of the Committee to be Vice-President. to be Vice-Presidents.

17. The term of office of a Vice-President shall not ex-Term of office of Vice. ceed two years, but if still a member, he shall be eligible for re-appointment.

18. Every election and appointment of a member or appointment of President and Vice-President of a Committee shall be notified.

²[Provided the Minister-in-charge o' Municipalities, with the previous sanction of the Government, may refuse to notify the election of any person who could be removed from office by the Government under any of the provisions of section 12, or of any person whom the Government for any reason which it may deem to affect the public interest, may consider to be

October, 1927 published in Government Gazette dated 8th Katik '984.

Proviso to section 18 added vide Act XI of 1990 published in Government Gazette dated 2nd Chet 1990.

unfitted to be a member of the Committee, and upon such refusal the election of such persons shall be void.]

Conduct of Business.

- 19. (1) Every Committee shall meet for the transactime for holding meet. tion of business at least once in every month.
- (2) The President or, in his absence, a Vice-President may, whenever he thinks fit, and shall, on a requisition made in writing by not less than one-fifth of the members of Committee, convene either an ordinary or a special meeting at any other time.

19-A. (I) Every meeting of a Committee shall be either ordinary or special.

(2) Any business may be transacted at an ordinary meting unless required by this Act or the rules thereunder to be transacted at a special meeting.

20. The quorum necessary for the transaction of business at a special meeting of a Committee shall be one-half and at an ordinary meeting one-third of the number of Committee actually serving at the time.

'[Provided that if at any ordinary or special meeting of a Committee a quorum is not present the Chairman shall ad ourn the meeting to such other day as he may think fit and the business which would have been brought before the General meeting if there had been a quorum present, shall be brought before and transacted at the adjourned meeting whether there be a quorum present then at or not.]

21. At every meeting of a Committee the President, if present, or in his absence or during the vacancy of his office, the senior Vice-President present then such one of their number as the members present may elect, shall preside as Chairman.

Votes of majority derisive.

Potes of majority derisive.

Recisive.

Potes of majority derisive.

Recisive.

R

Proviso to section 20 added vile State Council Resolution No. OXIX, dated 17th May.
1926 published in Government Gazette dated 11th Sawan 1983.

a second or casting vote.

23. (1) Minutes of the proceedings at each meeting of a Committee shall be drawn up and recorded in a book to be kept for the purpose, shall be signed by the Chairman of the meeting or of the next ensuing meeting, and shall, at all reasonable times and without charge, be open to inspection by any inhabitant.

(2) A copy of every resolution passed at any meeting of a Committee shall, within three days from the date of the meeting, be forwarded to Minister-in-charge and to the Gover-

nor of the Province.

24. Every Committee may, from time to time, make bye-laws consistent with the Act and with the rules as to:—

(a) the time and place of its meeting;

 (b) the manner in which notice of ordinary and special meetings and adjourned meetings shall be given;

(c) the conduct of proceedings at meetings and the ad-

journment of meetings;

(d) the custody of common seal and the purposes for

which it shall be used;

(e) the appointment of sub-committees and their duties, the division of duties among the members of the Committee and the powers to be exercised by such members as are primarily responsible for the current executive administration, whether President, Vice-Presidents, members of sub-committees or individual members; and

(f) the person by whom receipts shall be granted on behalf of the Committee or money received under this Act;

'[(g) the appointment, duties, executive powers, leave,

suspension and removal of its officers and servants;

(h) appeal from executive orders of sub-committees, the President, Vice-President, members, officers and servants of the Committee; and

(i) all other similar matters.]

Delegation of Powers.

Extraordinary powers of President or Vice-President in case of emergency and delegation to the Minister.

Line cases of emergency the President, or in his absence or during the vacancy of his office, a Vice-President may direct the execution of any work or the doing of any act which the Committee is empowered to execute or do, and the immediate execution or do-

'Clauses (g), (i) and (i) of section 24 added vide Chief Minister's letter No. 55-3-P, dated 22ul September, 1917 published in Government Gazette dated 19th Magher 1974.

ing of which is, in his opinion, necessary for the service or safety of the public, and may direct that the expense of executing such work or doing such act shall be paid from the Municipal Fund:

Provided that every direction given under this section shall be reported to the next following meeting of the Com-

mittee.

- (2) The President or Vice-Pesident shall not act under this section in contravention of any order of the Committee.
- (3) The President or, in his absence or during the vacancy of his office, a Vice-President may prohibit, until the matter has been considered by the Committee, the doing of any act which is, in his opinion, undesirable in the public interest, provided that the act is one which the Committee has power to prohibit.

(4) No direction given under this section shall be questioned in any court on the ground that the case was not one of

emergency.

(5) The Government may delegate to the Minister-incharge of Municipalities any of its powers under this Act.

25-A. (1) The Committee may, with the approval of Minister-in-charge of the Municipalities and Delegation by Comshall, if so required by the Minister, delegate to the President or the Health Officer, all or any of the powers conferred upon the Committee by sections:-

Employments of officers and servants. 27.

Disposal of animals. 70.

Cleaning of filthy building or land. 73.

Requiring owners to clear away noxious vegetation. 75.

Requiring hedges and trees to be trimmed.

80 and 81. Provision and repairs and closing of drains, privies, etc.

Requiring the removal of nuisance arising from

tanks etc.

89. Disinfect on of buildings and articles.
121 to 124 and 126 and 128. Powers of entry and inspec-

tion. (2) The Committee may and shall, in like manner, delegate to the President or Vice-President its Powers under sections:—

Remission of tax. 50.

Powers of entry. 53.

Supply of water. 66. 71. Power to require buildings, wells etc. to be secured.

Buildings etc. in dangerous condition.

72. Power over streets. IOI-A.

102. Power of temporary occupation.

104. Removal of projections.

107. Power to attach brackets for lamps.

125. Inspection of weights.

127. Search for inflammable and explosive articles.

Officers and Servants.

Appointment of Secretary and also a Sanitary Engineer, tary, Engineer and Health or one person with combined duties of Secretary and Sanitary Engineer and a Health Officer and other officers with such duties as may be assigned to them and with such pay as may be thought fit.

27. (I) The Committee shall appoint, promote, suspend, fine, reduce, transfer, grant leave and disofficers and servants. miss officers and servants on salary of

Rs. 50 or less.

(2) The Minister-in-charge of Municipalities shall, in addition to the powers of Committee, exercise similar powers in respect of officers and servants on a salary of Rs. 200 or less. The sanction of the Government shall be necessary for officers on a salary of more than Rs. 200.

(3) The Minister-in-charge shall hear appeals against the orders of the Committee and his order shall be final, subject to

revision by the Government.

28. (I) If an officer or servant of a Committee is a Pension leave allow. Government Official:—
ance and provident fund.

(a) the Committee may, if his service are wholly lent to it, contribute to his pension, gratuity, and leave allowances in accordance with any general or special orders of the Govern-

ment in force for the time being, and

(b) all officers and servants of the Committee, engaged previous to the date of passing of this Act, shall be considered permanent and pensionable servants of the State and shall be entitled to gratuity or pension under Pension Rules of the State, to be paid from Municipal funds.

(c) grant him leave, absentee or acting allowance.

(2) If an officer or servant of a Committee is not a Government official, the Committee may, subject to such conditions as the Government may prescribe:—

(a) if his pay is less than ten rupees a month, grant

him a gratuity on retirement; or,

(b) establish, and maintain a Provident or Annuity and compel him to contribute thereto.

1[(3) (a) In the absence of a written contract to the contrary, every officer or servant employed by a Committee, shall be entitled to one month's notice before discharge or to one month s wages in lieu thereof, unless he is discharged during a period of probation or for misconduct or was engaged for a special term and discharged at the end of it.

(b) Should any officer or servant employed by a Committee, in the absence of a written contract authorising him so to do, and without reasonable cause, resign his employment or absent himself from his duties without giving one month's notice to the Committee, he shall be liable to forfeit a sum, not exceeding one month's wages out of any wages due to him.

(c) Should any sweeper employed by a Committee, in the absence of a written contract authorising him so to do, and without reasonable cause, resign his employment or absent himself from his duties without giving one month's notice to the Committee, or neglect or refuse to perform his duties or any of them, he shall be liable to punishment of fine extending to two month's pay.

(d) The Government may, by notification, direct that, on and from a date to be specified in the notification, the provisions of sub-section (c) with respect to sweepers shall apply also to any specified class of servants employed by any Committee whose functions intimately concern the public health

or safety.]

Contracts.

29. (I) A contract, whereof the value or amount exceeds two hundred rupees, shall not be executed Authority to contract until it has been sanctioned by the Minisand mode of accepting contracts ter-in-charge of the Municipalities.

(2) Every contract made by or on behalf of a Committee whereof the value or amount exceeds 20 (twenty) rupees shall be in writing, and every such contract shall be signed by the President, or Vice-President and the Secretary.

(3) Every transfer of immoveable property belonging to any Committee must be made by an instrument in writing executed by the President, or Vice-President, and by at least two other members of Committee whose execution thereof shall be attested by the Secretary and this must be finally sanctioned in writing by the Government.

(4) No contract or transfer of the description mentioned in this section, executed otherwise than in conformity with the provisions of this section, shall be binding on the Commit-

tee or the Government.

Section 28 (3) added vide Chief Minister's letter No. 9706/p-25/18, dated 7th February 1918 published in Government Gazette dated 5th Katik 1975.

30. (I) If any member, officer or servant of a Committee is, without the permission in writing of the Minister-in-charge, directly or indirectly interested in contract made with a Committee.

Minister-in-charge, directly or indirectly interested in any contract made with that Committee.

Committee, he may be removed from his position or post and such contract may be made null and void.

(2) No member, officer or servant of a Committee shall, by reason only of his being a shareholder in, or a member of, any incorporated or registered company, be held to be interested in any contract entered into between the said company and the Committee; but no such person as aforesaid shall take part in any proceedings of the Committee relating to any such contracts.

31. No suit shall be instituted against a Committee or against any officer or servant of a Committee, in respect of any act purporting to be done in its or his official capacity until the expiration of one month next after notice in writing has been, in the case of a Committee, delivered or left at its office, and in the case of an officer or servant, delivered to him, or left at his office or place of abode stating the cause of action, and the name and place of abode of the intending plaintiff, and the plaint must contain a statement that such notice has been so delivered or left.

Provided that nothing in this section shall apply to any

suit instituted for grant of injunction.

32. Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to a Committee, if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while a member of of the Committee; and a suit for compensation for the same may be instituted against him by the Committee with the sanction of the Minister-in-charge in such court as the Government may direct.

CHAPTER IV.

MUNICIPAL FUND AND PROPERTY.

- 33. There shall be formed for each Municipality a Municipal Fund. Cipal Fund and there shall be placed to the credit thereof:—
- (a) all sums received by or on behalf of the Committee under this Act or otherwise;

(b) all fines realised in cases in which prosecutions for offences committed within the Municipality are instituted under this Act or bye-laws in force at the time being;

(c) all fines and forfeitures for offences committed within the Municipality under 'Police Ain No. 31, Motor Vehicles

Act and Cruelty to Animals Act.

34. The Committee shall set apart and apply out of the Municipal Fund such sum as may be re-Application of Fund quired for:-

(1) the payment of any amounts falling due on any

loan legally contracted by the Committee;

(2) establishment;

(3) the construction, maintenance, improvement, cleaning and repair of all public streets, bridges, embankments, drains, privies, latrines, urinals, tanks and water-courses;

(4) other charges, expenditure whereon may be declared by the Committee, with the sanction of the Government, to be an appropriate charge on the Municipal Fund, and the watering and lighting of streets;

(5) supply, storage and preservation from pollution of

water, for the use of men and animals;

(6) the planting and preservation of trees and maintenance of Municipal gardens;

(7) the registration of births, marriages and deaths,

public vaccination and any sanitary measure;

(8) maintenance of hospitals for infectious diseases;

(9) all acts and things which are likely to promote the safety, health, welfare or convenience of the inhabitants; and (10) the holding of fairs and industrial exhibitions.

35. The Municipal Fund shall be kept in the State Treas-Custody of Municipal ury.

Funds

Subject to any special reservation, all property of 36. the nature, specified hereinafter and situated within the Municipality, shall vest in, vested in Property and be under the control of, the Committee. Committee.

(a) all public markets, slaughter houses, manure and nightsoil depots, public buildings of every description, and public streets which have been constructed or are maintained out of the Municipal Fund;

(b) all public streams, springs and works for the sup-

ply, storage and distribution of water for public purposes; (c) all refuse or filth or rubbish of any kind or dead bodies of animals, collected by the Committee within the Municipal limits;

(d) all public lamps and lamp posts;

(e) such other things which the Government may, from time to time, notify in the Jammu and Kashmir Government Gazette; and

(1) all land or other property transferred to the Commit-

tee by the Government or acquired by the Committee.

of every public institution maintained out the Committee subject to such conditions as may be imposed by the Minister-in-charge of Municipalities.

38. When any land, whether within or without the limits of a Municipality, is required for the purposes of this Act, the Government may, at the request of the Committee, proceed to acquire it under the provisions of the State Land Acquisition Act; and, on payment by the Committee of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the Committee.

CHAPTER V.

TAXATION.

39. (I) Subject to any general or special orders which the Government may make in this behalf, the Committee may impose, in the whole or any part of the Municipality, any of the ioliowing taxes with the previous sanction of the Government:—

(2) a tax payable by the owner, on buildings and lands;

(3) a tax on persons practising any profession or art or carrying on any trade or calling in the Municipality;

(4) a tax or toll or both on vehicles and animals and boats

within the Municipality;

(5) an octroi on animals or goods or both brought within

the octroi limits for consumption or use therein;

Note.—Until further orders, the octroi will be collected by the Customs Department and after deduction of collection expenses, not exceeding 10 % the receipts snall be paid to the Municipal Fund, vide His Highness' Order No. 1311, dated 25/28th June, 1927.

(6) for the purpose of constructing or maintaining works for the supply of water to the Municipality or paying the principal or interest or both of any loan raised for the construction of such works, a tax payable by the occupier, or if there be no occupier, by the owner on the annual value of such buildings

or lands as are so situated that their occupiers can benefit by the works;

(7) a tax payable by the cccupier of any building in respect of which the Committee has, in exercise of the powers conferred by section 98 of this Act, undertaken the house scavenging;

(8) lighting tax for providing lights in public streets and

thoroughfares;

(9) any other tax that the Government may approve and sanction.

40. (I) A Committee may, at a special meeting, pass a Procedure in imposing resolution to propose the imposition of

any tax under section 39.

(2) When such a resolution has been passed, the Committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted.

(3) Any inhabitant objecting to the proposed tax may within 30 days from the publication of the said notice, submit his objection in writing to the Committee; and the Committee shall, at a special meeting, take his objection into considera-

tion.

(4) If no such objection is received within the said period of 30 days, or if all such objections, having been considered as aforesaid, are deemed insufficient, the Committee may forward its proposal to the Government, with the objection (if any) which have been submitted as aforesaid and for such orders as Government may give.

(5) When any proposal of a Committee has been sanctioned by the Government, the Government shall notify the imposition of the tax and shall in the notification specify a date not less than three months from the date of the notification, on

which the tax shall come into force.

(6) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act.

Procedure for assessing immoveable property.

41. The Committee shall cause an assessment list of all Preparation of assess. buildings and lands on which any tax is imposed to be prepared containing:—

(a) the name of the street or division in which the pro-

perty is situated:

(b) the designation of the property, either by name or by number sufficient for identification;

(c) the names of the owner and occupier, if known;

(d) the annual value, area, or length of frontage on which the property is assessed; and

(e) the amount of the tax assessed thereon by the Com-

mittee.

42. When the assessment list has been completed, the Committee shall give public notice thereof, and of the place where the list or a copy Publication and comthereof may be inspected and every perpletion of assessment son claiming to be either owner or occulist.

pier of property included in the list and any authorised agent of such person shall be at liberty to inspect the list and to

make extracts therefrom without charge.

43. (I The Committee shall, at the time of the publication of such assessment list, give public notice of a time, not less than one month Public notice of time thereafter, when it will proceed to revise fixed for revising assessment list. the valuation and assessment: and in all

cases, in which any property is for the first time assessed, or the assessment thereof is increased, it shall also give notice thereof to the owner or occupier of the property.

(2) All objections to the valuation and assessment shall be made in writing before the time fixed in the notice, or orally

or in writing at that time.

44. (1) After the objections have been enquired into and the persons making them have been Settlement of list. allowed an opportunity of being heard either in person or by authorised agent, as they may think fit, and the revision of the valuation and assessment has been completed, the amendments made in the list shall be authenticated by the signatures of not less than two members of the Committee, who shall at the same time certify that no valid objection has been made to the valuation and assessment contained in the list, except in the cases in which amendments have been entered therein; and, subject to such amendments as may thereafter be duly made, the tax so assessed shall be deemed to be the tax leviable.

(2) The list, when amended under this section, shall be deposited in the Committee's office and shall there be open, during office hours, to all owners or occupiers of property comprised therein or the authorised agents of such persons, and a public notice that it is so open shall forthwith be pub-

lished.

45. (1) The Committee may, at any time, amend the list by inserting the name of any person Further amendments whose name ought to have been or ought of assessment list. to be inserted, or by inserting any property which ought to have been or ought to be inserted, or by altering the assessment on any property which has been erroneously valued or assessed through traud, accident or mistake, whether on the part of the Committee or of the assessee, or in the case of a tax, payable by the occupier by a change in the tenancy, after giving notice to any person affected by the the amendment, or a time, not less than one month from the date of service, at which the amendment is to be made.

- (2) Any person interested in any such amendment may tender his objection to the Committee in writing before the time fixed in the notice, or orally or in writing at that time, and shall be allowed an opportunity of being heard in support of the same in person, or by authorised agent, as he may think fit.
- New list need not be prepared every year.

 New list need not be prepared every year.

 or to adopt the valuation and assessment contained in the list for any year, with such alterations as may in particular cases be deemed necessary, as the valuation and assessment for the year following, giving to persons affected by such alterations the same notice of the valuation and assessment as it a new assessment list had been prepared.

General Provisions.

Tax not invalid for made under the authority of this Act shall detect of form. be impeached or affected by reason or any mistake in the name, residence, place of business or occupation of any person hable to pay the tax, or in the description of any property or thing habie to the tax, or of any mistake in the amount of assessment or tax, or by reason of any clerical error or other detect of form, and it shall be enough in any such tax on property or any assessment or value for the purpose of any such tax if the property taxed or assessed is so described as to be generally known, and it shall not be necessary to name the owner or occupier thereof.

A8. (I) A Committee may, with the sanction of the Minister-in-charge of the Municipalities, exempt in whole or in part, for any period not exceeding one year, from the payment of any such tax, any person who, by reason of poverty, may, in its opinion, be unable to pay the same and may renew such

exemption as often as may be necessary.

(2) A Committee by a resolution passed at a special meet

ing and confirmed by the Government, may:-

(a) abolish, suspend or reduce in amount any tax im-

posed under the foregoing sections; or

(b) exempt in whole or in part from the payment of any such tax, any person or class of persons or any property or description of property.

49. (1) The Government may by order exempt in whole or in part from the payment of any such tax any person or class of persons or any Powers of Government

property or description of property. in regard to taxes.

(2) If at any time it appears to the Government, on complaint made or otherwise, that any tax imposed under the foregoing sections is unfair in its incidence or that the levy thereof or of any part thereof is injurious to the interests of the general public, it may require the Committee to take within a specified period measures to remove the objection; and, if within that period the requirement is not complied with to the satisfaction of the Government, the Government may, by notification, suspend the levy of the tax or of such part thereof until the objection has been removed.

50. (1) When any property assessed to a tax under section 39, clause 2, has remained unoccupied Remission of tax on and unproductive of rent throughout the unoccupied immoveable property. year or the period in respect of which any instalment is payable, the Committee shall remit the amount of the tax or of the instalment, as the case may be:

Provided that no such remission shall be granted unless notice in writing of the circumstances under which it is claimed has been given to the Committee within the first month after the expiry of the period in respect of which it is so claimed.

(a) has not been occupied or productive of rent for any period of not less than 60 consecutive days, or

(b) consists of separate tenements, one or more of which has or have not been occupied or productive of rent for any such period as aforesaid, or

(c) is wholly or in greater part demolished or destroyed

Ly fire or otherwise,

the Committee may remit such portion (if any) of the tax or instalment as it may think equitable.

(3) The burden of proving the facts entitling any person

to claim relief under this section shall lie upon him.

51. Every person shall, on the demand of an officer duly authorised by the Committee in this be-Duty of furnishing true information regardhalf, furnish such information as may be ing liability to Municipal necessary in order to ascertain whether taxation. such person is liable to pay any Municipal

Tax; and every hotel or lodging-house keeper or secretary of a residential club shall also, on demand made as aforesaid, furnish a list of all persons residing in such hotel, lodging-house or club.

52. (1) Whenever the title to or over any building or land of any person primarily liable for the Notice to be given to payment of property taxes on such properthe Committee of :11 ty is transferred, the transferer shall, withtransfers of title of persons primarily liable to in three months of the act of transfer, payment of property tax. give notice in writing of such transfer to

the Committee, failing which he shall continue to be liable for the payment of all taxes till such notice is given or the trans-

fer is otherwise recorded in the Committee's books.

(2) But nothing in this section shall be held to diminish the liability of the transferee for the said taxes, or to affect the prior claim of the Committee for the recovery of the taxes due thereupon.

The Committee may authorise any 53. Power of entry for the purposes of valuation or persontaxation

(a) after giving 24 hours' notice to the occupier, or, if there be no occupier, to the owner, of any building or land, at any time between sunrise and sunset, to enter, inspect and measure any building for the purpose of valuation;

(b) to enter and inspect any stable, coach-house other place wherein there is reason to believe that there is any vehicle, vessel or animal liable to taxation under this Act or for

which a licence has not been duly taken out.

54. The levy of octroi and other matters connected therewith shall be governed, regulated and con-Octroi to be controlled trolled by the provisions of the State Octroi by Octroi Act. Act of 1958.

55. Subject to the provisions of sections 40 (5) and 44, any tax imposed under this chapter and payable periodically shall be payable on Taxes when payable. such dates and in such instalments (if any) as the Committee, with the previous sanction of the Minister-in-charge, may, from time to time, direct.

56. (1) When any sum is due on account of a tax payable under this Act in respect of any property by the owner thereof, the Commit-Recovery of taxes payable by owner. tee shall cause a bill for the amount, stat-

ing the property and the period for which the charge is made, to be delivered to the person liable to pay the same.

(2) If the bill be not paid within ten days from the delivery thereof, the Committee may cause a notice of demand to be served on the person liable to pay the same, and, if he

- de

does not, within seven days from the service of the notice, pay the sum due, with any fee leviable for the notice or show sufficient cause for non-payment, the sum due, with the fee, shall be deemed to be an arrear of tax.

(3) The amount of every such arrear, besides being recoverable in any other manner provided by this Act, shall, subject to any claim on behalf of the Government, be a first charge on the property in respect of which it is payable, and shall be recoverable through the Governor of the Province as arrears of land revenue.

Provided that nothing in this sub-section shall authorise

the arrest of a defaulter.

(4) If any tax or sum leviable under this Act from the owner is recovered from the occupier, such occupier shall, in the absence of any contract to the contrary, be entitled to recover the same from the owner and may deduct the same from the rent then or thereafter due by him to the owner.

Rules for Recovery of Municipal Claims.

57. I (I) When any arrears of tax, water rate fee or any other money claimable by a Committee under this Act shall have become due, the Muni-Presentation of the cipal Committee shall, with the least practicable delay, cause to be presented to the person liable for the payment thereof, a bill for the sum claimed as due.

(2) Every such bill shall specify—

Contents of bill.

further to a disease of the

(a) the period for which, and

(b) the property, occupation or thing in respect of which, the sum is claimed, and shall also give notice of-

(i) the liability incurred in default of payment and of (ii) the time within which an appeal may be preferred

as hereinafter provided against such claim. (3) If the sum for which any bill has been p esented as aforesaid is not paid into the Municipal If bill not p id within office or to a person authorised by any 15 days notice of demand rule in that behalf to receive such payto issue. ments, within fifteen days from the presentation thereof, the Municipal Committee, or an officer authorised by the Municipal Committee in this behalf, may cause to be served upon the person liable for the payment of the said sum a notice of demand.

Section 57 substituted vide Notification No. 18, dated 16th May, 1930 published in Government Gasette dated 9th Jeth 1987,

II. (1) If the person liable for the payment of the said sum does not, within fifteen days from the In what cases warrant service of such notice of demand, eithermay issue.

(a) pay the sum demanded in the notice, or

(b) show cause to the satisfaction of the Municipal Committee or such officer as the Municipal Committee may authorise in this behalf, or

(c) prefer an appeal in accordance with the provision

hereinafter mentioned.

such sum with all costs of the recovery may be levied under a warrant caused to be issued by the Municipal Committee or an officer duly authorised by it, by distress and sale of the moveable property of the defaulter.

(2) Every warrant issued under this section shall be signed and sealed by the President of the Muni-Warrant by whom to cipal Committee causing the same to be he signed.

issued.

(3) It shall be lawful for any Municipal Officer to whom a warrant issued under sub-section (2) is addressed if the warrant contains special Power of entry under special order. order authorising him in this behalf, but not otherwise, to break open, at any time between sunrise and sunset, any outer or inner door or window of a building, in order to make the distress directed in the warrant, if he has reasonable grounds for believing that such building contains property which is liable to seizure under the warrant, and if after notifying his authority and purpose and duly demanding admittance, he cannot otherwise obtain admittance. Provided that such officer shall not enter or break open the door of any apartment appropriated for women, until he has given three hours' notice of his intention, and has given such women an opportunity to remove.

(4) It shall also be lawful for such officer to distrain whereever it may be found, any moveable pro-Warrant how to ! be perty of the person therein named a de executed. faulter, subject to the following conditions,

exceptions and exemptions namely:-

(a) The following property shall not be distrained:— (i) the necessary wearing apparel and bedding of the defaulter, his wife and children,

(ii) the tools of artisans,

(iii) when the defaulter is an agriculturist, his implements of husbandry, seed-grain, and such cattle as may be necessary to enable the defaulter to earn his livelihood,

(b) The distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible proportionate in va'ue to the amount recoverable under the warrant, and if any articles have been distrained which, in the opinion of a person authorised by or under sub-section (2) to sign a warrant, shou'd not have been so distrained, they shall forthwith be returned.

(c) The officer shall on seizing the property forthwith make an inventory thereof, and shall before removing the same give to the person in possession thereof at the time of seizure, a written notice that such property will be sold as

shall be specified in such notice.

III. (1) When the property seized is subject to speedy and natural decay, or when the expense of

sale of goods distrained. keeping it in custody together with the amount to be levied is likely to exceed its value, the President shall at once give notice to the person in whose possession the property was when seized, to the effect that it will be sold at once, and shall sell it accordingly unless the amount named in the warrant be forthwith paid.

(2) If not sold at once under sub-section (1) the property

seized or a sufficient portion thereof may, un'ess the warrant is suspended by the Application of properson who signed it, or the sum due by the defaulter together with all costs incidental to the notice, warrant, and distress and detention of the property, is paid, be, on the expiry of the time specified in the notice served by the officer executing the warrant, sold by public auction under the orders of the Municipal Committee, or an officer duly authorised by the Committee in this behalf and the proceeds, or such part thereof as shall be requisite, shall be applied in discharge of the sum due and of all such incidental costs as aforesaid.

(3) The surp'us, if any, shall be forthwith credited to the Municipal Fund, notice of such credit being given at the same time to the person from whose possession the property was taken but if the same be claimed by written application to the Municipal Committee within one year from the date of the notice a refund thereof shall be made to such person. Any sum not claimed within one year from the date of such notice shall be the property of the Municipal Committee.

Fees and costs! charge-IV. Fees for-

> (a) every notice issued under sub-section(3) of Rule I, (b) every distress made, and

(c) the cost of maintaining any live-stock seized under this section, according to the rates respectively specified in such behalf by the Municipal Committee shall be included in the costs of re-

covery.

Appeals against any notice of demand issued under subsection (3) of I, may be made to the Minis-Appeals. ter-in-charge of Municipalities according to section 138 of this Act.

But no such appeal shall be heard and determined unless:-

(a) the appeal is brought within fifteen days next after

service of the notice of demand complained of and

(b) an application in writing, stating the grounds on which the claim of the Munic pal Committee is disputed, has been made to the Municipal Committee as follows, that is to say:---

> (i) in the case of a rate on buildings or lands, within time fixed in the notice of the assessment or alteration thereof, according to which the bill is

prepared,

(ii) in the case of any other claim for which a bill has been presented under sub-section (1) of I, within 15 days next after the presentation of such bill;

(c) the amount claimed from the appellant has been

deposited by him in the Municipal office.

All sums due on account of any tax imposed in the form of a rate on lands or buildings, or on both, Liability of land, buildshall, subject to prior payment of land ing, etc., for rates revenue, if any, due to Government thereupon, be a first charge upon the building or land, in respect of which such tax is leviable, and upon the moveable property, if any, found within or upon such building or land, and belonging to the person liable for such tax or taxes:

Provided that no arrears of any such tax shall be recovered from any occupier who is not the owner, if it has been due for more than one year or for a period during which such occupier

was not in occupation.

58. (I) In case of non-payment of any toll on demand, the officer empowered to collect the same may seize any vehicle, vessel or animal Recovery of tolls. on which the toll is chargeable, or any part of its burden of

sufficient value to satisfy the demand.

(2) The Committee, after the lapse of five days from the seizure, and after the issue of a proclamation fixing the time and place of sale, may cause any property so seized, or so much thereof as may be necessary, to be sold by auction to satisfy the demand, with the expenses, occasioned by the seizure. custody and sale thereof, unless the demand and expenses are in the meantime paid:

Proivided that, by order of the President or a Vice-President, articles of a perishable nature, which could not be kept for five days without serious risk of damage, may be sold after the lapse of such shorter time as he may, having regard to the nature of the articles, think proper.

59. The collection of any toll may be leased by the Com-

mittee, with the previous sanction of the Minister-in-charge, for any period not ex-Power to lease the collection of taxes. ceeding one year; and the lessee and all persons employed by him in the management and collection of the toll shall in respect thereof-

(a) be bound by any orders made by the Committee for

their guidance;

(b) have such powers exercisable by officers of a Committee under this Act as the Committee may, from time to time, confer upon them with the sanction of the Minister-incharge:

(c) be entitled to the same remedies and be subject to the same responsibilities as if they were employed by the Com-

mittee for the management and collection of the toll.

60. (1) An appeal against the assessment or levy of, or Appeals :.gninst Taxaagainst the refusal to refund, any tax under this Act shall lie to the Minister-in-charge, whose orders shall be final.

(2) If, on the hearing of an appeal under this section, any question as to the liability to, or the principle of assess-ment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion, or on the application of any person interested, draw up a statement of the facts of the case and the point on which doubt is entertained and refer the statement with his own opinion on the point for the decision of the High Court.

(3) On a reference being made under sub-section (2) the subsequent proceedings in this case, shall be, as nearly as may be, in conformity with the rules relating to the references to the High Court contained in the State Civil Procedure

Code.

(4) In every appeal the costs shall be in the discretion of

the officer deciding the appeal.

(5) Costs awarded under this section to the Committee shall be recoverable by the Committee as though they were

arrears of a tax due from the appellant.

(6) If the Committee fail to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the officer awarding the costs may order the person having the custody of the balance of the Municipal Fund to pay the amount.

Limitation of appeal. land or building un'ess it is preferred within one month after the date of its final determination, and no appeal shall lie in respect of any other tax unless it is preferred within one month from the time when the demand for the tax is made:

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the officer before whom the appeal is preferred that he had sufficient cause for not presenting the appeal

within that period.

(2) No appeal shall be entertained unless the appellant has paid all other Municipal taxes due from him to the Committee up to the date of such appeal.

CHAPTER VI.

EXTINCTION AND PREVENTION OF F'RE.

Establishment & mointenance of fire brigade.

Betablishment & mointenance of fire brigade.

brigade and may provide any implements, machinery or means of communicating intelligence which the Committee may think necessary for the efficient discharge of their duties by the brigade or the Committee may transfer the control to the Police Department, but all costs for the maintenance of the fire brigade shall be paid from Municipal Funds.

NOTE.—The control and the maintenance of the Fire Brigade Department is at present vested in the Police Department vide State Council Resolution

No. XXXIV dated 18th August 1893.

Power of fire brigade Magistrate, the secretary of the Committee, any member of Committee, any member of a fire brigade, maintained by the the Committee then and there directing the operations of men belonging to the brigade, and any police officer above the rank of a constable, may:—

(a) remove or order the removal of any person who by his presence interferes with or impedes the operation for ex-

tinguishing the fire or for saving life or property;

(b) close any street or passage in or near which any

(c) for the purpose of extinguishing the fire break into or through or pull down, or cause to be broken into or through or pulled down, or used for the passage of houses or other appliances, any premises;

(d) cause mains and pipes to be shut off so as to give greater presusre of water in or near the place where the fire has occurred;

(e) can on the persons in charge of any fire engine to

render such assistance as may be possible,

and

(t) generally, take such measures as may appear neces-

sary for the preservation of the or property.

When any State building is endangered by such a fire the officer for the time being in charge of the building may exercise the powers conterred on a Magistrate by this sub-sect.on.

(2) No person shall be liable to pay damages for any act

done by him under sub-section (1) in good faith.

- (3) Any damage done in the exercise of a power conferred or a duty imposed by this section shall be deemed to be damage by fire within the meaning of any policy of insurance against fire.
- 64. The power conferred by the last foregoing section shall be subject to any regulations, condi-Limitation or operation tions or restrictions which may be imposed of chapter. by rule.

CHAPTER VII.

WATER SUPPLY.

65. The Committee may provide a supply of drinking water within the Municipality, and shall Provisions of water. cause such tanks, reservoirs, engines, pipes, taps, and other works as may be necessary for the said purpose to be constructed and maintained whether within or without the Municipality, and shall erect sufficient stand-pipes or other conveniences for the gratuitous supply of water to the public.

66. The Committee may, on application by the owner of any building, arrange for supplying Supply of water to conwater from the nearest main to the same nected premises. for domestic purposes in such quantities as it deem proper, subject to the rules which the Committee may ame with the approval of the Government.

CHAPTER VIII.

POWERS FOR SANITARY AND OTHER PURPOSES.

Bathing and Washing Places.

67. The Committee may set apart suitable places for the purposes of bathing and may specify the times at which, and the sex and class Bathing and washing places. of the persons by whom, such places may be used, and may also set apart suitable places for washing animals or clothes, or for any other purpose connected with the health, cleanliness or comfort of the inhabitants and may, by public notice, prohibit bathing or washing animals or clothes in any public place not so set apart, or at times or by persons other than those specified, and any other act by which water in public places may be rendered foul or unfit for use.

The Committee may fix, by notice, places at which 68. articles of clothing, bedding or other articles which have been exposed to infection Fixation of places for washing infected clothes. shall be washed and no person shall wash

any such article at any place not so fixed.

Burial and Burning Piaces.

(1) The Committee may, with the approval of the Minister-in-charge, by public notice, order any burial or burning ground situate within Powers in respect of burial and burning places. Municipal limits or within one mile thereof, which is certified by the Chief Medical Officer or Health Officer to be dangerous to the health of persons living in the neighbourhood, to be closed from a date to be specified in the notice, and shall, in such case, if no suitable place for burial or burning exists within a reasonable distance, provide a fitting place. for the purpose.

(2) Private burial places in such burial-gounds, may be excepted from the notice, subject to such conditions as the

Committee may impose in this behalf.

(3) No burial or burning ground, whether public or private, shall be made or formed within the Municipality or at a distance of less than one mile from any of its limits, after the commencement of this Act without the permission in writing of the Committee.

(4) The Committee may, by public notice, prescribe or prohibit routes for the removal of co pses to burial or burning

grounds.

Dangerous Animals.

70. The Committee may authorise any person to remove or confine any animal suffering or reasonably suspected to be suffering of rabies or Disposal of anima's. other infectious disease, and for such act no compensation shall be payable: Provided that no animal whose destruction is prohibited under 'section 219 of Ranbir Dand Bidhi, shall be destroyed.

Dangerous or Insanitary Buildings or Places.

71. Should any building or any well, tank, reservoir, pool, depression or excavation be in Powers to require buildcondition as may be deemed by the Comings, wells, tanks, etc to mittee to be dangerous to the persons be secured. dwelling or working therein or in the neighbourhood or to persons passing by, the Committee may, by notice, require the owner or occupier thereof to repair, protect or enclose the same; and should it appear to it to be necessary in order to prevent imminent danger, it shall forthwith take such steps to avert the danger as may be necessary.

72. Should any building, wall or structure, or any thing affixed thereto, or any bank or tree, be deemed by the Committee to be in a ruin-Baildings etc. in dangerous state. ous state or in any way dangerous, it may, by notice, require the owner thereof forthwith either to remove the same or to cause such repairs to be made to the building, wall, structure, or bank as the Committee may consider necessary for the public safety, and should it appear to be necessary in order to prevent imminent danger, the Committee shall forthwith take such steps, at the expense of the

owner, to avert the danger as may be necessary.

73. Should the owner or occupier of any building or land suffer the same to be in a filthy or Cleaning of filthy buildunwholesome state, the Committee may, ing or land. by notice, require him, within 24 hours, to cleanse the same or otherwise put it in a proper state and thereafter to keep it in a clean and proper state, and, if it appear to be necessary for santitary purposes to do so, may, at any time by notice, direct the occupier of any building to limewash or otherwise cleanse the said building inside and outside in the manner and within a period to be specified in the notice.

Should any building, or any part of any building appear to the Committee to be unfit for human Power to prohibit use habitation in consequence of the want of for human habitation of buildings unfit for such proper means of drainage or ventilation or use. any sufficient reason, the Committee may,

Section 298 A Ranbir Penal Code.

by notice, prohibit the owner or occupier thereof nem using the same for human habitation or suffering it to be so used, until it has been rendered fit for such use to the reasonable; satisfaction of the Committee.

- Powers to require own.

 On occupier of any land to clear away and remove any thick vegetation or undertee to be injurious to health or offensive to the neighbourhood.
- Powers to require or occupier of any land to cut of the leader and trees to be in three days the hedges growing the eon and bordering on any street, or any branches of trees growing thereon which overhang any street and obstruct the same of cause danger, or which so overhang any well, tank of other source from which water is derived for public use as to be likely to positive the water thereof.
- Power to require untended buildings becoming a nuisance to be secured or land which, by reason or abandonment or disputed ownership or other cause, has remained untenanted and become a resort of idle and disorderly persons or otherwise a nuisance, to secure or enclose the same whithin a reasonable time fixed in the notice.
- 78. If the Chief Medical Office, or Health Officer certifies that the cultivation of any description of crop or use of any kind of manuale of the irrigation, injurious to health.
- (a) in any place within the limits of any Municipality, is injurious or facilitates practices which are injurious to the health of persons dwelling in the neighbourhood,
- (b) in any place within or beyond the limits of any Municipality is likely to contaminate the water supply of such Municipality or otherwise render it unfit for human consumption, the Government may, by not neation, prohibit the cultivation of such clops, the use of such manure or the use of the method of irrigation so reported to be injurious or impose such conditions with respect thereto as may prevent such injury or contamination:

Provided that when on any and to which such notification applies, the act prohibited has been practised during the five years next preceding the nonneation in the ordinary course of husbandry, compensation shall be paid from the Municipal Fund to all persons interested therein for any damage caused to them by the effect of such notification.

Dangerous or Offensive Trade.

79. (1) No place within a Municipality which the Municipality may prohibit shall be used for any Regulation of offensive of the following purposes:-

melting tallow or boiling bones, offal, or blood;

as a soap-house, oil-boiling house, dyeing house, or tannery;

as a brickfield, brick kiln, pottery or lime kiln;

as any other manufactory, engine house or place of business from which offensive or unwholesome smells, noises or smoke arise;

as a yard or depot for trade in hay, straw, thatching grass, wood, charcoal or coal or other dangerously inflam-

mable material;

as a store house for any explosive or for petroleum or

any inflammable oil or spirit;

except under a licence to be issued by the Committee in such form and on such fees as the Government may direct, which shall be renewable annually, or after such longer time as the Committee may fix.

(2) The licence shall not be withheld unless the Committee considers that the business, which it is intended to establish or maintain, would be offensive or dangerous to persons residing in or frequenting the immediate neighbourhood.

Drains and Privies.

- (1) The Committee may, by notice, require the owner of any building or land to provide, add to, move, remove, repair, alter or other-Provision of drains, privies, etc. wise change in form, or shut out from view any drain, urinal, privy, cesspool or other receptacle for filth or refuse and it may prescribe the pattern according to which new ones should be made.
- (2) The Committee may, by notice, require any person employing more than 20 workmen or labourers to provide such la rines and urinals as it may think fit and to cause the same to be kept in proper order and to be daily cleaned.

81. The Committee may, by notice require any person who may construct any new drain, privy, latrine, urinal, cesspool or receptacle for filth or refuse without its permission in

writing or convary to its directions or regu-

Repair and closing of drains, privies, latrines, minule and cesspools.

lations or the provisions of this Act or who may construct, rebuild or open any drain, privy, latrine, urinal, cesspool or receptacle for filth or refuse which it has ordered to be demolished or stopped up or not to be made, to demolish the drain, privy, latrine, urinal, cesspool, or receptacle, or to make such alteration therein as it may think fit.

82. The Committee may, by notice, require any person,

who without its permission in writing may newly erect or rebuild any building over any sewer, drain, culvert, water-course or water-pipe vested in the Committee,

to pull down or otherwise deal with the same as it may think fit.

83. No person shall, without the permission of the Com-

Making or altering drains without authority and and discharging sewerage. Sev

mittee, make or alter or cause to be made or altered any drain leading into any of the sewers or drains, vested in the Committee, nor shall he allow any refuse or offen-

sive matter to flow or drain or be put upon any street or place or into any sewer or drain not set apart for this purpose.

84. The Committee may, by notice, require the owner

Power to require removal of nuisance arising from tanks and the like. or occupier of any land or building to cleanse, repair, cover, fill up or drain off any private well, tank, reservoir, pool, depression or excavation therein which may

appear to the Committee to be injurious to health or offensive

to the neighbourhood:

Provided that if for the purpose of effecting any drainage under this section it should be necessary to acquire any land not belonging to the same owner or to pay compensation to any person, the Committee shall provide such land or pay such compensation.

Laying and connecting pipes, sewers and the like.

85. The Committee may carry any cable, wire, pipe,

Power of Committee to lay or carry wire, pipes, drains or sewers, through private land subject to payment of compensation for damages sustained, provided that no nuisance is created. drain, sewer or channel of any kind, for the purpose of establishing telephonic or other similar communication or of carrying out and establishing or maintaining any system of lighting, drainage or sewerage through, across, under, or over any road, street or place laid out as or intended for a road or street and after giving reasonable notice in writing to the owner or occu-

pier, into, through, across, under, over or up the side of any land or building whatsoever situate within the limits of the Muni-

cipality, and for the purpose of the introduction, distribution of outfall of water or for the removal or outfall of sewerage without such limits and may, at all times, do all acts and things which may be necessary or expedient for repairing or main-taining any such cable, wire, pipe, drain, sewer or channel, as the case may be, in any effective state for the purpose for which the same may be used or intended to be used:

Provided that no nuisance more than is necessarily caused by the proper execution of the work, is created by any such operation and the interference is considered indispensable, and

Provided further that reasonable compensation shall be paid to the owner or occupier for any damage at the time sustained by him and directly occasioned by the carrying out of any such operations.

86. No person shall, without the permission of the Com-

Connection with main not to be made without permission of Committee

mittee, at any time make or cause to be made, any connection or communication with any cable, wire, pipe, sewer or chan-nel constructed or maintained by or vest-

ed in the Committee, for any purpose whatsoever.

87. The Committee may, at any time, establish any

Connection may be made or required by the

connection or communication from any water main, drain, or sewer to any premises, Committee in the case of or may, by notice, require the owner of such premises to establish any such connection of communication in such manner and within such time

as the Committee, by notice in that behalf, may prescribe,

at the cost of such owner or occupier.

88. (1) The Committee may, by notice, require the ownand pipes er of any building or land in any street to for rain water. put up and keep in good condition proper troughs and pipes for receiving and carrying the water from the building or land and for discharging the same so as not to inconvenience persons passing along the street.

(2) For the purpose of efficiently draining any building

or land the Committee may, by notice, in writing,

(a) require any courtyard, alley or passage between two or more buildings to be paved with such materials and in such manner as may be approved by them, and,

(b) require such paving to be kept in proper repair.

Public Health.

89. If the Committee is of opinion that the cleaning or disinfecting of a building or boat or tent, Disinfection of buildor any part thereof, or of any article thereings and articles. in, which is likely to retain infection, will

tend to prevent or check the spread of any disease, it may, by notice, require the owner or occupier to cleanse or disinfect the same in the manner and within the time prescribed in such notice.

90. No person shall—

(I) knowingly let a building, boat or tent, or any other part of it in which any person has been suffering infected houses; suffering from an infectious disease without

letting infected houses; doing of acts by diseased persons; keeping of injurious animals and feeding of animals on deleterious substances. part of it in which any person has been suffering from an infectious disease without having it and such of its contents as are liable to retain infection disinfected to the satisfaction of the Committee, or of any officer authorised by it in this behalf, or

(2) while suffering from any infectious, contagious or loathsome disease make or sell or touch when exposed for sale by others any article of food or drink or any medicine or drug for human consumption, or take any part in washing or carrying soiled clothes, or

(3) keep any animal so as to be injurious to the health

of persons or animals or so as to become a nuisance, or

(4) feed or allow to be fed any animal, kept for dairy purposes or which may be used for food, on deleterious substance or refuse or filth of any kind.

Information about infections diseases.

90 -A. Every person—

(a) being a medical practitioner or a person openly and constantly practising the medical profession and in the course of such practice become cognizant of the existance of Cholera, Plague, Small-pox, Typhus fever, Measles, Diphtheria, Tuberculosis diseases, Cerebrospinal fever or other dangerous infectious disease which may be notified by the Government in any dwelling other than a public Hospital; or in default of any such medical practitioner or person practising the medical profession,

(b) being the owner or occupier of such dwelling and being cognizant of the existence of any such disease therein; or

in default of such owner or occupier,

(c) being the person incharge of, or in attendance on, any person suffering from any such disease in such dwelling and being cognizant of the existence of the disease therein,

Shall give correct information to such officer as the Committee may direct respecting the existence of such

91. Should the Committee, on the report of the Chief Medical Officer, or Health Cfficer, consimittee of use of under that the water in any well, tank or other place is likely, if used for drinking, to ergender or cause the spread of any dangerous disease, it

may-(a) by public notice, prohibit the removal or use of such

water for drinking;

(b) by notice, require the owner or person having control of such well, tank or place to take such steps as may be specified in the notice to prevent the public frem having access to or using such water; or

(c) take such steps as it may, on the advice of the Chief Medical Officer or Health Officer, consider expedient to pre-

vent the danger or spread of any such disease.

92. (1) No person shall sell to the prejudice of any purchaser, any article of feed or drink which Penalty for selling food or drink not of is not of the nature, substance or quality of the article demanded by such purchaser. the nature, substance or quality of the article demanded by the purchaser.

Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say-

(a) where any matter or ingredient not injurious to health has been added to food or drink in order to the production or preparation of the same as an article of commerce in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight or measure or conceal the inferior quality thereof;

(b) where food or drink is unavoidably mixed with some extraneous matter in the process of collection or prepa-

ration.

(2) In any prosecution under this section, it sha'l be no defence to allege that the vendor was ignorant of the nature, substance or quality of the article sold by him, or that the the purchaser, having bought such articles only for analysis, was not prejudiced by the sale.

93. (1) The Committee may, with the sanction of the Government, by notice in writing, prohi-Power over disorderly bit in any specified part of the Munic pa-(houses and prostitutes. lity' [* *] the residence of a public

prostitute.

(2) Whoever fails to comply with a notice issued under sub-section (1) shall be punishable with imprisonment for a term which may extend to eight days or with fine which may exterd to so rupees and, in the case of a continuing failure, with an additional fire ret exceeding five rupees for every day after the first in regard to which he is convicted of having persisted in the failure.

^{&#}x27;In section 93 (1) words"(1) the keeping of a brothal" and "(b)" deleted wide Regulation XI of 19)1, published in Government Gazette dated.21st Maghar 1991.

¹94. Repealed.

Scavenging and House Scavenging.

95. The Committee may fix places within or, with the approval of the Governor, beyond the limits Removal and deposit of the Municipality for the deposit of refuse, of offensive matter. rubbish or offensive matter of any kind or for the disposal of the dead bodies of animals and may, by public notice, give directions as to the time, manner, and conditions at, in and under which such refuse, rubbish or offensive matter or dead bodies of animals may be removed and deposited at such places.

96. No person being the owner or occupier of any building or land shall keep or knowingly or Failure remove negligently allow to be kept for more than 24 offensive matter. hours, or otherwise than in some proper receptacle or pit, noxious or offensive matter nor shall any such

receptacle or pit be in a filthy or noxious state.

97. No person shall, without the permission of the Com-

Depositing, throwing refuse, rubbish or offensive matter, nuisance on roads or into drains. street into

communicating

mittee or in disregard of its orders, throw earth or materials or or deposit or permit others under his control to throw or deposit earth or materials of any description, or refuse, rubbish or offensive matter of any kind, upon any any public sewer or drain or any drain therewith, nor shall he permit any person under his control to whom the provisions of 'sections 68.

69 and 70 of the Ranbir Dand Bidhi are applicable, to commit a nuisance into any such place or upon any street.

98. (a) Subject to the provisions hereinafter contained, the Committee may, at any time, under-Undertaking by Comtake the house scavenging of any house or mittee of scavenging building on the application or with the generally.

consent of the occupier.

(b) The Committee may, by public notice, undertake the house scavenging of any house or building in the Municipality from any date not less than two months after issue of the notice.

(c) The occupier of any house or building affected by the notice may at any time after the issue thereof, apply to the Committee to exclude that house or building from the notice.

(d) The Committee shall consider or pass orders every such application within six weeks of the receipt thereof, and may by any such order, exclude such house or building from the notice.

Section 94 repealed vide Act XI of 1991 published in Government Gazatte dated 21st Maghar 1991. Sections 82,83 and 84 Ranbir Penal Code.

(e) In deciding whether to exclude any house or building from the notice, the Committee shall consider, among other matter, the efficiency of the arrangements for house scavenging made by the occupier (if any) and the purpose to which he applies the matter dealt with in house scavenging.

Slaughter Houses.

Governor of the Province, fix premises either within or without the limits of the Municipality for the slaughter of animals for sale of any specified description of such animals, and may grant and withdraw licences for the use of such premises, or, if they belong to the Committee, charge rent or fees for the use of the same.

(2) When such premises have been fixed by the Committee beyond Municipal limits, it shall have the same power to make bye-laws for the inspection and proper regulation of the same

as if they were within those limits.

(3) When such premises have been fixed by the Committee, no person shall slaughter any such animal for sale within the

Municipality at any other place.

of dead some religious purpose, the person in charge thereof shall, within 24 hours, either:

(a) convey the carcass to a place (if any) fixed by the Committee under section 95 for the disposal of the dead bodies of animals, or to any place at least one mile beyond the limits of the Municipality; or

(b) give notice of the death to the Committee, whereupon the Committee shall cause the carcass to be disposed of.

(2) In respect of the disposal of the dead body of an animal under clause (b) of sub-section (1), the Committee may charge such fee as it may, by public notice, have prescribed.

(3) For the purpose of this section the word "animal" shall be deemed to mean all horned cattle, elephants, camels, horses, ponies, asses, mules, deer, sheep, goats, swine and other large animals.

Streets and Buildings.

Power over streets. 101. The Committee may:-

(a) close temporarily any public street or any part thereof for any public purpose;

(b) divert, discontinue or close permanently any public street.

102. The Committee may grant permission in writing for the temporary occupation of any street or land, vested in it, for the purpose o Power of permitting temporary occupation of streets etc. depositing any building materials or making any temporary excavation therein or erection thereon, subject to such conditions as it may prescribe for the safety or convenience of person passing by or dwelling or working in the neighbourhood, and may charge fees for such permission and may, at its discretion, withdraw the permission.

102-A. The Committee may, by notice, require the owner of any building, wall or structure or anything affixed thereto or any bank or tree which has fallen in such a way as to obstruct or encroach upon any street sever drain or water.

to obstruct or encroach upon any street, sewer, drain or water-

course to remove the same.

103. (1) When the Municipal Committee considers that in any street, not being a public street Power to require rewhich has previously been levelled, paved, pairs of streets and to declare such streets as metalled, channelled, sewered or repaired out of Municipal or other public Funds, or in any part of such street, within the Municipality, it is necessary, for the public health, convenience or safety, that any work should be done for the levelling, paving, metalling, flagging, channelling, draining, lighting, or cleaning thereof, the Municipal Committee may, by written notice, require the public. respective owners of the lands or buildings fronting, adjoining

notice. (2) If such notice is not complied with during the time specified, the Committee may, if it thinks fit, execute the work mentioned or referred to therein, and may recover, under the provisions of section 56, the expenses incurred in doing so from the owners in default according to the frontage of their respective lands or buildings and in such proportion as may be

or abutting upon such street or part thereof to carry out such

work in a manner and within a time to be specified in such

decided by the Committee.

(3) After such work has been carried out by such owners, or, as provided in clause (2), by the Municipal Committee at the expense of such owners, the street or part thereof in which such work has been done, may, and, on the joint requisition of a majority of the said owners, shall, be declared, by a public notice put up therein by the Municipal Committee, to be a public street, and shall vest in the Committee.

(4) A Municipal Committee may, at any time, by notice fixed up in any street or part of a street not maintainable by the Municipal Committee, give intimation of their intention to declare the same a public street, and, unless, within one month next after such notice has been so put up, owner or the majority of several owners of such street or such part of a street lodges or lodge objections thereto at the Municipal office, the Municipal Committee may, by notice in writing, put up in such street, or such part declare the same to be a public street vested in the Committee.

(5) This section shall not take effect in any Municipality until it has been specially extended thereto by the Govern-

ment at the request of the Committee.

104. (I) No person shall, without the written permis-Removal of projections sion of the Committee,

(a) place in front of any building or build or erect any immoveable or moveable encroachment upon the ground level of any street or over or on any sewer, drain or water-course or any moveable overhanging structure projecting into a street at a point above the said ground level;

(b) take up or alter the pavement or other materials or

the fences or posts of any street;

(c) deposit building materials, goods for sale, or other

articles of merchandise on any street; or

(d) make any hole or excavation on, in or under, any street, or remove materials from beneath any street, so as to cause risk of subsidence.

(2) The Committee may, in addition to punishing the

offender without paying any compensation:-

(i) summarily remove, or cause to be removed by the Police, any such moveable encroachments or everhanging structures and any such materials, goods or articles of merchandise.

(ii) take order summarily to restore the street to the condition it was in before any such alteration. excavation or damage, and the expense of such restoration shall be recoverable from the offender.

Explanation.—For the purposes of this section "moveable encroachment" includes a seat or settle, and "moveable overhanging structure" includes an awning of any material.

105. (1) Should any building or part of a building project beyond the regular line of a street, regulate either existing or determined on for the line of buildings. future, or beyond the front of the building or either side thereof, the Committee may, whenever such building or part has been either entirely or in greater part taken down or burnt down, or has fallen down, by notice, require such building or part when being rebuilt to be set back to or towards the said regular line or the front of the adjoining

buildings; and the portion of the land added to the street by such setting back or removal shall become part of the street and shall vest in the Committee.

Provided that the Committee shall make full compensation to the owner for any damage he may sustain in conse-

quence of his building or any part thereof being set back.

(2) The Committee may, on such terms as it may think fit, allow any building to be set forward for the improvement of the line of the street.

Removal of projections and obstructions on payment of compensation.

106. In cases to which the provisions of section 104 do not apply, the Committee may, subject to the payment of reasonable compensation, by notice, require the owner or occupier of any building to remove or alter any balcony, projection, structure, or verandah

overhanging, projecting into or encroaching on any street or

into or on any drain, sewer or aqueduct therein.

107. The Committee may attach to the outside of any Power to attach brac- building brackets for lamps in such mankets for lamps. ner as not to occasion any injury thereto, or inconvenience.

108. No person, who is not authorised or permitted to Destroying direction do so by the Committee, shallposts, lamp post etc.

(I) deface, change, destroy or disturb any municipal direction post, or lamp or any name or number affixed to any street, building or place, or

(2) picket animals or collect vehicles on any street or use any street as a place for halting or encampment for any

vehicles or cause or permit animals to stray, or

(3) drive vehicles after dark when there is not suffi-

cient moonlight, without proper lights, or

(4) discharge fireworks or fire-arms of any kind or engage in any game or carry on any operations in such manner as to cause, or likely to cause, danger to life or property or both.

109. The Committee may, where it appears to it to be necessary, for the prevention of danger to life or property, by public notice, pro-Inflammable materials. hibit all persons from stacking or collecting timber, wood, dry grass, straw, or other inflammable materials, or placing mats or thatched huts or lighting fires in any place or within any limits specified in the notice.

110. The Committee may direct that, within certain limits to be fixed by it, the roofs and external walls of huts or other buildings shall walls not to be made of not be made or renewed of grass, mats, inflammable materials.

leaves or other highly inflammable materials without the permission of the Committee in writing, and the Committee may, by written notice, require any person, who has disobeyed any such direction, to remove or alter the roofs of walls so made or renewed as it may think fit.

CHAPTER IX.

BYE-LAWS.

by the Government relating to any of the following and other matters shall remain in force unless they have been superseded or modified by any of the provisions of this Act or any rule or bye-laws issued thereunder.

Making of other byelaws.

112. Any Committee may, by bye--

(a) render licences necessary for the proprietors or drivers of vehicles, boats or animals kept or plying for hire within the limits of the Municipality, and fix the fees payable for such licences and the conditions on which they are to be

granted and may be revoked;

(b) limit the rates which may be demanded for the hire of any carriage, cart, or other conveyance, or of animals hired to carry loads or persons, or for the services of persons hired to carry loads or to impel or carry such conveyances, and the loads to be carried by such conveyance, animals or persons when hired within the Municipality for a period not exceeding 24 hours or for a service which would ordinarily be performed within 24 hours;

(c) provide for the proper registration of births, mar-

riages and deaths, and for the taking of a census;

(d) fix, and from time to time vary, the number of persons who may occupy a building or part of a building, which is let in lodgings or occupied by members of more than one family, or which is situated within such congested bazar areas as may be specified in the bye-law; and provide—

(i) for the registration and inspection of such buildings;

(ii) for promoting cleanliness and ventilation in such buildings;

 (iii) for the notices to be given and the precautions to be taken in the case of any infectious or contagious diseases breaking out in such buildings;

(iv) for fixing, regulating and prohibiting the use of places at which boats may be moored, loaded and

unloaded;

- (v) in the case of hotel, serai and lodging-house keepers and the secretaries of residential clubs for the maintenance of registers in such forms as the Committee may prescribe, of visitors and lodgers;
- (vi) generally for the proper regulation of such buildings;

(e) provide:—

(i) for the inspection and proper regulation of encamping grounds, pounds, serais, bakeries, ærated water factories, dairies, ice factories, dhobi's ghots, flour mills and slaughter houses;

(ii) for the inspection and proper regulation of markets for the preparation and exhibition of a price current and for fixing the fees, rents and other

charges, to be levied in such markets;

(iii) for defining the standard weights and measures to be used in the Municipality and for the inspection of weights and measures under section 125;

(iv) for the holding of fairs and industrial exhibitions within the Municipality or under the control of the Committee, and for the collection of fees;

(v) for controlling and regulating the use and manage-

ment of burial and burning grounds;

(vi) for the supervision, regulation and protection from pollution of public wells, tanks, springs, or other sources from which water is or may be made available for the use of the public, whether within or without the Municipality;

(f) require and regulate the appointment by owners of building or land in the Municipality, who are not resident in the Municipality, of persons residing within or near the Municipality to act as their agents for all or any of the purposes of

this Act or any rule thereunder;

(g) render licences necessary for using premises as stables,"

cow houses, or houses or enclosures for sheep or goats;

(h) in any Municipality where a reasonble number of slaughter-houses has been provided or licensed by the Committee, control, regulate, or prohibit the admission within the Municipal limits for the purpose of sale of the flesh (other than cured or preserved meat) of any sheep or goat slaughtered at any slaughter-house or place not maintained or licensed under this Act, and may provide for the seizure, destruction or disposal otherwise of any flesh brought within Municipal limits in contravention of any such bye-law;

(i) fix premises within the Municipality in which the slaughter of animals of any particular kind, not for sale, shall

be permitted, and prohibit, except in case of necessity, such slaughter elsewhere within the Municipality: Provided that no such bye-law shall apply to animals slaughtered for any religious purpose;

(j) prohibit the letting off of fire-arms, fireworks, fire-

balloons, bombs or detonators except:-

(1) with the permission of the Committee or of a Municipal officer empowered to give such permission,

(2) subject to such conditions as the Committee may impose, and

(3) on payment of such fees (if any) as may at any time have been fixed by the Committee in that

behalf;

(k) regulate the making and use of connections or communications between private houses and premises and mains or service cables, wires, pipes, drains, sewers and other channels established or maintained by the Committee, under any of the provisions of this Act,

(1) regulate the posting of bills and advertisements, and the position, size, shape, and style of name-boards, sign-

boards and sign-posts;

(m) provide for, regulate, require or prohibit the construction, pattern of construction, maintenance and materials of boundary walls, hedges, and fences hereafter erected or reerected so as to abut on a public street or upon property vested in the Committee;

(n) regulate, license or prohibit any description of tra-

ffic in the street;

(o) prohibit the storage of more than a fixed maximum quantity of any explosive, petroleum, spirit, naptha or other inflammable material in any building not registered or licensed under section 79;

(p) provide for the seizure and confiscation of ownerless animals straying within the limits of the Municipality;

(q) prescribe stamp duties for applications, agreements, contracts and bonds etc.;

(r) generally provide for carrying out the purposes of this Act.

113. (1) No person shall erect or re-erect or commence Prohibition of building to erect or re-erect any building without the sanction of the Committee.

(2) Every person, who intends to erect or re-erect any building, shall give notice in writing to the Committee of such

intention.

(3) A Committee may, by bye-law:—

(a) prescribe the manner in which notice of the intention to erect or re-erect a building shall be given to the Committee; (b) require that with every such notice shall be furnished a site plan of the land on which it is intended to erect or re-erect such building and a plan and specification of the building of all such character and with such details as the bye-law may require.

Power of Committee to pect of the erection or re-erection of any building within the Municipality or part

of construction of build- thereof—

(a) the materials and method of construction to be used for external and party walls, roofs, floors, fire-places, and chimneys;

(b) the materials and method of construction and position of fire-places, chimneys, drains, latrine privies, urinals,

and cesspools;

(c) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on;

(d) the ventilation and the space to be left about the building to secure the free circulation of air and for the pre-

vention of fire;

(e) the line of frontage where the building abuts on a street;

(f) the number and height of the storeys of which the

building may consist; and

(g) the means to be provided for egress from the building in the case of fire.

Power of Committee to if any, required by sub-section (2) of section or refuse.

Power of Committee to tion 113, the Committee may refuse to sanction the building or may sanction it either absolutely or subject to such modification as it may deem fit in respect of all or any of the matters specified in subsection 3 of that section, and the person erecting or re-erecting any such building as aforesaid shall comply with the sanction of the Committee as granted in every particular.

Provided that should the Committee neglect or omit for two months after the receipt of a valid notice to make and deliver to the person who has given such notice an order of sanction or refusal in respect thereof, it shall be deemed to have sanctioned the proposed building absolutely. ¹[The limit of period, fixed in this section, shall not apply to such applications for construction of buildings as require the final sanction of the Government under special rules and bye-laws.]

¹ in section 115 words in brackets added vide Chief Minister's letter No 7827, dated 24th February 1916.

116. Every sanction for the erection or re-erection of any building which shall be given, or be deemed Lapse of sanction. to have been given, by a Committee, shall remain in force for one year only from the date of such sanction. Should the erection or re-erection of the building not have been commenced within the period of one year, the sanction shall be deemed to have lapsed; but such lapse shall not bar any subsequent application for fresh sanction under the foregoing provisions of the Act.

117. The Committee shall make full compensation to the owner for any damage which he may sus-Compensation for tain in consequence of the prohibition of

the re-erection of any building:

Provided that the Committee shall not be liable to make any compensation in respect of the prohibition of the re-erection of any building, which, for a period of three years or more immediately preceding such prohibition, has ceased to be fit for occupation or to exist or having been demolished or destroyed has not been re-erected.

The Committee may, by 118. Powers of Committee law to regulate the manufacture, preparation and sale of food and drink.

. (a) prohibit the manufacture or preparation for sale of any specified articles of food or drink in any premises not licensed by the Committee;

(b) regulate the grant and withdrawal of licences to premises for the manufacture or preparation for sale of such

specified articles of food or drink;

(c) regulate the hours and manner of transport within the Municipality of any specified articles of food or drink;

(d) fix the places in which any specified article of food or drink may be sold or exposed for sale or the places in which it may not be sold or exposed for sale;

(e) prohibit the sale of milk, cheese and butter by per-

sons not licensed by the Committee;

(f) prohibit the import into the Municipality for sale of milk, cheese and butter by persons not licensed by the Com-

(g) fix the conditions on which the licences under this

section are to be granted and may be revoked:

Provided that no person shall be punishable for breach of any bye-law made under clause (a) or clause (d) of this section by reason of the continuance of such manufacture, preparation or exposure for sale or sale upon any premises which are, at the time of the making of such bye-law, used for such purpose until he has received from the Committee six months'

notice in writing to discontinue such manufacutre, preparation or exposure for such sale, or such sale in such premises.

- 119. (I) No bye-law, made under this Act, shall come into force until it has been confirmed by the Government and published in such manner as the Government may prescribe in this behalf.
- (2) The Government may cancel its confirmation of any such bye-law, and thereupon the bye-law shall cease to have effect.
- Bye-laws to be available for purchase and inspection.

 (I) A copy of all bye-laws shall be kept at the Committee's office, and shall be open during office hours, without charge, to the inspection of any inhabitant.

(2) Copies of all such bye-laws shall be kept at the Com-

mittee's office for sale to the public.

CHAPTER X.

OF PROCEDURE.

Powers of entry and inspection.

Inspection of drains, privies and cesspools.

Pool, cable, wire, pipes, sewer or channel therein, or thereon, and to cause the ground to be opened where such person as aforesaid may think lit for the purpose of preventing or removing any nuisance arising from the drains, privies, latrines, urinals, cesspools, cables, wires, pipes, sewers or channels.

(2) If, on such inspection, it appears that the opening of the ground was necessary for the prevention or removal of a nuisance, the expenses thereby incurred shall be paid by the owner or occupie of the land or building; but if it be tound othat no nuisence exist or but for such opening would have arisen, the ground or portion of any building, drain or other work, if any, opened, injured or removed for the purpose of such inspection, shall be filled in, made good and reinstated by the Committee.

(3) No building other then a latrine, urinal or privy, shall be entered under this section until six hour's notice in writing

has been given to the occupier of the building by the Committee or by the person authorised by the Committee to make the entry.

122. (I) The Committee may authorise any person after giving three hours, notice to the occupier, or, if there be no occupier, to the owner of any tent, building or boat to enter and inspect at any time between sunrise and sunset where such in-

spection appears necessary for sanitary reasons.

(2) If the building to be inspected is a stable for horses or a house shed for cows and other cattle, previous notice shall not be requisite before inspection.

or buildings or land.

The Committee may authorise any person, after giving twenty-four hours, notice to the occupier, or, if there be no occupier, to the owner of any building or land or boat, at any time between sunrise and sunset:—

(a) to enter on and to survey, and to take levels or

measurements of any building or land or boat;

(b) to enter into any building or on any land or boat for the purpose for examining works under construction, of ascertaining the course of sewers or drains, or of executing or repairing any work which it is by this Act empowered to execute or to maintain;

(c) to enter into any building or any land or tent or boat for the purpose of inspecting or repairing water, electric or other installations and for taking readings of meters con-

nected therewith.

124. The Committee may authorise any person at all

Power to inspect places for sale of food or drink, etc. and to seize unwholesome articles exposed for sale.

reasonable times to enter into and to inspect any market, building, shop, stall or place used for the sale of food or drink for man, or as a slaughter-house, or for the sale of drugs, and to inspect and

examine any food or drink, animal or drug, which may be therein; and, if any article of food or drink, or any animal therein appears to be intended for the consumption of man and to be unfit therefor, may seize and remove the same or may cause it to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for such consumption; and, in case it is reasonably suspected that any drug is adulterated in such manner as to lessen its efficacy or to change its operation or to render it noxious, to remove the same, giving a receipt therefor, and to cause the owner thereof to be brought before a Magistrate for enquiry whether any offence has been committed in respect thereof and for orders as to the disposal of the said drug.

animale.

125. (1) The Committee, by any person authorised by it in this behalf, may at all reasonable times enter into and inspect any market, inspection of weights and me sures and seizure building, shop, stall or place used for the of false weights etc.

sale of any goods, food, drink or drug, and instruments of weighing, weights and may inspect any measures, found therein, and test the same with other weights and measures, and may seize any such instrument for weighing, weight or measure which the person so authorised reasonably believes to be false or not in accordance with bye-laws made by the Committee under section 112(e) (iii) and may take the same to be examined or tested by the officer appointed for the purpose.

(2) Every person for the time being in charge of or employed in such market, building, shop, stall or place shall, if so requested by the person making such inspection, produce for such inspection and comparison all instruments for weigh-

ing, weights and measures kept therein.

126. If there are reasonable grounds for believing that

any animal has been, is being or is about to Inspection of places be, slaughtered in any place or premises for illicit slaughter of not fixed for such purpose under section 99 or in contravention of bye-law made

under section 112 (e) (i), the Committee, by any person authorised by it in this behalf, may, at all reasonable times, enter

into and inspect any such place or premises.

Provided that no entry shall be made under the provisions of this section without an order in writing from the President or from the Health Officer. Such order shall specify the place or premises to be entered and the locality in which the same is situated and the period (which shall not exceed seven days) for which it is to remain in force.

127. (1) The Committee may authorise any person to enter upon at any reasonable time and in-Search for Inflammable spect any house or building which is susor explosive material in pected to contain petroleum, explosive or excess of authorised quantity. other inflammable material, in excess of the quantity permitted to be kept in such house or building, under the provisions of this Act or of any rule, bye-law or

public notice made or published thereunder. (2) Should any such excess quantity of such material be discovered, it may be seized and held subject to such order as

a Magistrate may pass with respect to it.

(3) If the Magistrate decides that the material seized was stored in the house or building contrary to the provisions of this Act or of any rule, bye-law or public notice made or published thereunder, he shall pass an order confiscating the same (4) Subject to any general rules for the time being applicable thereto, the material confiscated may be sold by order of the Magistrate, and the proceeds, after defraying the expenses of such sale, shall be credited to the Municipal Fund.

(5) No order of the confiscation under this section shall operate to prevent any other criminal or civil proceedings to which the person storing the material in excessive quantity

may be liable.

128. The Committee may authorise persons to exercise the powers of entry conferred by this Act either generally in regard to all buildings, boats, tents and lands or particularly in regard to specified buildings, boats, tents and lands.

129. When any building or boat used as a human dwelling is entered under this Act due regard

shall be paid to the social and religious sentiments of the occupiers and before any

apartment in the actual occupancy of any woman, who according to custom does not appear in public is entered under this Act, notice shall be given to her that she is at liberty to withdraw and every reasonable facility shall be afforded to her for withdrawing.

Notice and consequences of non-compliance.

130. When any notice under this Act requires any act to Reasonable time for be done for which no time is fixed by this compliance to be fixed. Act, it shall fix a reasonable time for doing the same.

131. (I) Every notice issued by the Committee under this Act or under any rule or bye-law shall Authentication, service be in writing, signed by the President,

Vice-President, Engineer, Health Officer, Secretary or Assistant Secretary or by the members of any Sub-Committee specially authorised by the Committee in that behalf, and may be served in the manner provided for the service of summons in the Civil Procedure Code so far as may be applicable.

(2) No notice, issued by the Committee under this Act or under any rule or bye-law, shall be invalid for defect of form.

Service when owner may be given to the owner or occupier of and occupier are different persons. any land or building, and the owner and occupier or different persons, such notice shall be given to the one o. them primarily liable to comply with such notice, and, in case of doubt, to both of them:

Provided that in any such case where there is no owner resident within the Municipality, the delivery of such notice to the occupier shall be sufficient.

Publication of public notice, given by a Committee under this Act or any rule or bye-law, shall be published by proclamation or in such other manner as the Government may, by rule,

Powers of Committee complication event of non-complication event of non-complication and non-complication complication of non-complication event of non-complication event of non-complication in event of non-complication

of property is required by the Committee to execute any work and default has been made in complying with the requirement, and the Committee has executed the work, the Committee may recover the cost of the work from the person in default.

(2) As between themselves and the Committee, both owner and occupier shall be deemed to be in default for the purposes of this section, but that one of them shall be deemed to be primarily in default upon whom, as between landlord and tenants, the duty of doing the required act would properly fall, either in pursuance of the contract of tenancy or bye-law.

(3) When the person primarily in default is the owner, and the Committee has recovered the whole or any part of the cost from the occupier, or he has paid the same upon its demand, he may deduct the sum so recovered or paid, from the rent from time to time becoming due from him to the owner, or

otherwise recover it from such owner:

Provided that no occupier shall be required to pay under sub-section (3) any sum greater than the amount for the time being due from him to the owner, either in respect of rent due at the date of such demand as aforesaid or thereafter accruing, unless he has refused on application to him by the Committee truly to disclose the amount of his rent and the name and address of the person to whom it is payable; but the burden of proof that the sum so demanded by the Committee from the occupier exceeds the rent due at the time of the demand, or which has since accrued due, shall lie on the occupier.

(4) All money recoverable by a Committee under this section may be recovered either by suit or on application to a Magistrate having jurisdiction within the Municipality by distress and sale of the movable property of the person from whom the money is recoverable, and if payable by the owner of the property, shall, until it is paid, be a charge on the property.

(5) Nothing in this section shall affect any contracts be-

tween an owner and an occupier.

136. (1) When any person, by reason of his receiving the rent of immovable property as agent or trustees.

Relief to agents and trustee, or of his being as agent or trustee the person who would receive the rent if the property were let to a tenant, would, under this Act, be bound to discharge any obligation imposed by this Act on the owner of the property and for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, in his hand funds belonging to the owner sufficient for the purpose.

(2) The burden of proving the fact entitling an agent or

trustee to relief under this section shall lie on him.

(3) When an agent or trustee has claimed and established his right to relief under this section, the Committee may give him notice to apply to the discharge of such obligation as aforesaid the first moneys which shall come to his hands on behalf, or for the use, of the owner, and should he fail to comply with such notice, he shall be deemed to be personally liable to discharge such obligation.

Payment of compensation by the Committee.

Payment of compensation of the Municipal Fund to any person sustaining any damage by reason of the exercise of any of the power vested in the Committee, its officers and servants, under this Act, and shall make such compensation where the damage was caused by the negligence of the Committee, its officers or servants and the person sustaining the damage was not himself in default in the matter in respect of which the power was exercised:

Provided that if the amount of compensation in any case exceeds Rs. 100, the sanction of the Minister-in-charge, and if it exceeds Rs. 500, the sanction of the Government shall be

necessary.

(2) Should any dispute arise touching the amount of any compensation which the Committee is required by this Act to pay for injury to any building or land, it shall be settled in such manner as the parties may agree, or, in default of agreement, in the manner provided by the State Land Acquisition Act, with reference to the acquisition of, and payment of compensation for, land for public purposes, so far as it can be made applicable.

Appeal from orders etc.

Appeal from orders of Committee.

Appeal from orders of any officer duly authorised by the Committee, may, within 30 days, appeal to the Minister-in-charge, whose orders on the appeal shall be final.

Prosecution to be suspended in certain cases.

has been instituted against it, all proceedings to enforce such order and all prosecutions for any breach thereof shall be suspended pending the decision of the appeal, and, if such order is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

Offences, prosecutions and penalties.

take cognisance of any offence punishable under this Act or any rule or any bye-law thereunder, except on the complaint of or upon information received from, the Committee, or some person authorised by the Committee in this behalf.

Explanation.—The Committee may authorise persons to make complaints or give information, without previous reference to the Committee either generally in regard to all offences against this Act and the rules or bye-laws thereunder, or particularly in regard only to specified offences of a specified class. The person authorised may be authorised by office, if he is President, Vice-President or Secretary of the Committee or officer-in-charge of a Police Station; in other cases the authority must be personal. The authority must in all cases be in writing, and may at any time be cancelled by the Committee.

Penalties.

141. (1) Whoever

(i) (a) obstructs or refuses to submit to the lawful authority of any persons acting in pursuance of section 124 to 127 of this Act;

(b) does, or abets the doing of, and act in contravention of the provisions of section 90 (1) of this Act, shall, on conviction before a Magistrate, be punished for each such offence with a fine which may extend to Rs. 200.

(ii) Does, or abets the doing of any other act in contravention of any of the provisions of this Act or any rules, bye-laws, notices, orders or licences issued thereunder, or obstructs any person lawfully acting in pursuance of this Act shall on conviction before a Magistrate, be punished for each such offence with a fine which may extend to Rs. 50, and should the offence or breach be a continuing one, with a further fine which may extend to Rs. 5 for every subsequent day till it continues.

(2) In addition to such fine the offender may also be required to remedy the mischief so for as may be possible or it

may be so remedied by the Committee at his cost.

(3) No compensation, except as otherwise expressly provided for, shall be claimable for any loss or expenditure to which any person may be put in consequence of complying with, or enforcement of, any lawful order of the Committee.

(4) The punishment, provided for above, shall be in addition to any other proceedings which may be taken under this

Act.

142. (1) The Committee, or with the authorisation of the Committee, its President, Vice-Presioffences.

dent, Health Officer or Secretary or any Sub-Committee thereof, may accept from any person, against whom a reasonble suspicion exists that he

has committed an offence against this Act or any rule or byelaw, a sum of money by way of compensation for such offence.

(2) On payment of such sum of money, the suspected

person, if in custody, shall be discharged, and no further proceeding shall be taken against him in regard to the offence or alleged offence so compounded for.

(3) Sums, paid by way of compensation under this section, shall be credited to the Municipal Fund.

(4) Authorisation under sub-section (1) to accept compensation for alleged offence may be given by the Committee, either generally in regard to all offences under this Act and the rule and bye-laws or particularly in regard only to specified offences or offences of a specified class, and may at any time be withdrawn by the Committee.

143. No Judge or Magistrate shall be deemed to be a party to, or personally interested in, any prosecution for an offence punishable under Member not to be deemed interested in prothis Act or any rule or bye-law or under secution. any other law within the meaning of sec-

tion 556 of the Criminal Procedure Code by reason only that he is a member of the Committee, by the order, or under the authority, of which it has been instituted.

CHAPTER XI.

CONTROL.

144. The Minister-in-charge of the Municipalities may, by order in writing, suspend the execution of any resolution or order of a Commit-Power Buspend action of Committee. tee or joint Committee, or prohibit the doing of any act which if about to be done or is being done, in pursuance of or under cover of this, Act or in pursuance of any sanction or permission granted by the Committee in the exercise of its power under this Act, if, in his opinion or in the opinion of the Governor of the Province, the resolution, order, or act is in excess of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons.

145. (1) Should a Committee be incompetent to perform,

Power of Government to supersede Committee in case of incompetency, persistent default or abuse of powers.

or persistently make default in the performance of, the duties imposed on it by or under this Act or any other Act, or exceed or abuse its powers, the Government may, by notification, in which the reasons for so doing shall be stated, declare the Committee to be superseded.

(2) When a Committee is so superseded, the following

consequences shall ensue:-

(a) all members of the Committee shall, from the date

of the notification, vacate their seats;

(b) all powers and duties of the Committee may, until the Committee is reconstituted, be exercised and performed by such persons as the Government may appoint in that behalf; (c) all property vested in the Committee shall, until

the Committee is reconstituted, vest in the Gove nment.

(3) The Government may, if it shall think fit, at any time. constitute another Committee in the place of any Committee superseded under this section.

146. (1) The Government may frame forms for any proceeding of a Committee for which it consi-Power of Government ders that a form should be provided, and to frame forms and make may make rules consistent with this rules.

Act:— (a) with respect to the powers and duties of Committee in Municipalities;

(b) as to the division of Municipalities into wards, or

of the inhabitants into classes or both;

 (c) as to the number of representatives proper for each ward or class;

(d) as to the qualification of electors and of candidates

for election;

(e) as to the registration of electors;

 (f) as to the nomination of candidates, the time of election and the mode of recording votes;

(g) generally for regulating all elections under this

Act.

(h) fixing the term of office of members of Committees;

(i) prescribing the qualifications requisite in the case of persons appointed by a Committee to offices requiring professional skill;

(i) as to the priority to be given to the several duties

of the Committee;

(k) as to the authority on which money may be paid from the Municipal Fund and as to the management and regulation of Provident Fund established under section 28;

(l) as to the formation and working of the Municipal

fire brigades;

(m) as to the procedure to be observed for the punishment or dismissal of servants of the Committee, and as to ap-

peals from orders of punishment or dismissal;

(n) as to the conditions on which property may be acquired by the Committee or on which property, vested in the Committee, may be transferred by sale, mortgage, lease, eschange or otherwise;

(o) as to the intermediate office or offices, if any, through which correspondence between Committees or members of Committees and the Government or the officers of the Govern-

ment shall pass;

(p) as to the preparation of plans and estimates for works to be partly or wholly constructed at the expense of Committees, and as to the person by whom, and the conditions subject to which, such plans and estimates are to be sanctioned;

(q) for the assessment and collection of, and for the compounding for, refunding or limiting refunds or taxes, imposed under this Act, and for preventing evasion of the same;

and for fixing the fees payable for notices of demand;

(r) as to the accounts to be kept by Committees, as to the conditions on which such accounts are to be open to inspection by inhabitants paying any tax under this Act, as to the manner in which such accounts are to be audited and published, and as to the power of the auditors in respect of disallowance and surcharge;

(s) as to the preparation of estimates of income and expenditure of Committee, and as to the persons by whom,

and the conditions subject to which, such estimates may be sanctioned;

(t) as to the returns, statements and reports to be sub-

mitted by Committees;

(u) as to the language in which business shall be transacted, proceedings recorded and notices issued;

(v) as to the publication of notices;

(w) to regulate the proceedings of persons empowered to accept composition under section 142 for alleged offences; and

(x) generally for the guidance of Committee and public officers in carrying out the purposes of this Act.

(2) Rules under clause (g) of sub-section (1) may, among

other matters, provide-

(i) for the investigation of allegations of corrupt prac-

tices or intimidation at elections;

(ii) for making void the election of any person proved, to the satisfaction of the Minister-in-charge of Municipalities to have been guilty of corruption or intimidation or to have connived at, or abetted, the exercise of corruption or intimidation on his behalf by any other person;
(iii) for rendering incapable of Municipal office either

permanently or for a term of years any person whose election may have been made void as aforesaid for corruption or intimidation or for connivance at, or abetment of, the same;

(iv) for the definition of the practices at Municipal elections which are to be deemed to be corrupt or to amount to

intimidation;

(v) for prescribing the authority by which questions relating to the matters referred to in clauses (d), (e) and (f)

of sub-section (I) shall be determined;

(vi) for authorising the officer deciding any objection to an election to order the objectors to pay the costs of all proceedings taken up on such objection if the latter be, in the opinion of such officer, frivolous or vexatious; such order shall be final; and

(vii) for authorising courts to take cognisance of the breach of any such rules on the complaint of the Minister-incharge or some person authorised in writing by the Minister-

in-charge.

(3) All rules made under this Act shall be subject to pre-

vious publication.

(4) A rule under this section may be general for all Municipalities or for all Municipalities not expressly excepted from its operation or may be special for the whole or any part of any one or more Municipalities as the Government direct.

CHAPTER XII.

SMALL TOWNS.

onstitution of notified upon which a Municipal Fund may be expended, improved arrangements are required within a specified area, hereinafter called a notified area, which, nevertheless, it is not expedient to constitute a Municipality.

148. The Government may—

Power of Government to impose taxation and regulate expenditure of proceeds thereof.

(1) impose in any notified area any tax which could be imposed there by the Committee if the notified area were a

Municipality;

(2) apply or adapt to the notified area, for the assessment and recovery of any tax imposed under clause (1), any provisions of this Act or any rules for the time being in force with respect to the assessment and recovery of any tax imposed under this Act;

(3) arrange for the due expenditure of the proceeds of taxes imposed under clause (1), and for the preparation and

maintenance of proper accounts;

(4) appoint a Committee of one or more persons for

the purpose of clauses (2) and (3);

(5) extend to any notified area the provisions of any section of this Act subject to such modifications and restrictions, if any, as the Government may think fit.

Application of Act to may be extended to a notified area, the Committee appointed for such area, under section 148 shall be deemed to be a Municipality.

150. The Government may, at any time, cancel or modi-Discontinuance of noti- fy any notification under section 147 or

any order under section 148.

Application of funds section 150, any notified area ceases to be notified.

Section 150, any notified area ceases to be notified.

notified, the unexpended funds shall be applied as the Government may think

THE CRIMINAL LAW AMENDMENT ACT, 1971.

CONTENTS.

Preamble.

SECTION.

1. Short title and extent.

PART I.

SPECIAL PROCEDURE.

2-14. Repealed.

PART II.

UNLAWFUL ASSOCIATION

15. Definition.

Power to declare association unlawful.

17. Penalties.

SECTION.

to \ Omitted.

17-G. Woman or child member of unlawful association, service of summons.

17-H. Trial, sentence.

17-I. Fine recoverable from guardian etc.

Continuance of association.

Schedule-omitted.

THE CRIMINAL LAW AMENDMENT ACT, 1971.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's letter No. 4282/N-10-07, dated 10th September 1940).

An Act to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace.

WHEREAS it is expedient to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace; it is hereby enacted as follows:—

1. (I) This Act may be called the Jammu and Kashmir State Criminal Law Amendment Act, Samvat 1971.

(2) It extends to the whole of Jammu and Kashmir State.

²2-14. Repealed.

note. - Offences under this Act were made triable by a Sessions Judge without commitment and assessors not withstanding procedure prescribed in this Act, by Notification No. 13-L/1988. This Notification was, however, amended by Act X of 1995 and procedure precribed in this Act for trial of offencess under the Act is restored (Editor).

²Section 2 to 14 repealed by Notification No. 48.L/1989, [published in Government Gazette dat 15th Phagan 1989 (Extraordinary)] on the auspicious birthday of Shri Yuv Raj Ji.

- PART II.

UNLAWFUL ASSOCIATIONS.

15. In this Part:—

Definitions.

(I) "Association" means any combination or body of persons, whether the same be known by any distinctive name or not; and

(2) "Unlawful Association" means an association—

(a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(b) which has been declared to be unlawful by His Highness the Maharaja Sahib Bahadur 'for the

Government].

- 16. If His Highness the Maharaja Sahib Bahadur '[orthe Government] is of opinion that any as-Power to declare associasociation interferes or has for its object intertion unlawful. ference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, His Highness the Maharaja Sahib Bahadur '[or the Government] may, by notification in the Jammu and Kashmir Government Gazette, declare such association to be unlawful.
- 17. (1) Whoever is a member of an unlawful association, or takes part in meetings of any such asso-Penalties. ciation, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

²17 (3) and 17-A to 17-F. Omitted. ³[17-G.—Whenever a woman or a child is member of an

'In sections 15 (b) and 16 after the words "His Highness the Maharaja S. hib Bahadur" the words "the Government" added vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996 and word "or" inserted vide Act II of 1997.

*Sections 17 (3) and 17-A, 17-B, 17-O, 17-D, 17-E and 17-F, were inserted by Regulation No. 27 of 1989 and were to remain in force for three years only from lat Baisakh 1990. These sections are ipso facto omitted being spent.

Sections 17-G, 17-H, 17-I, added by Act 12 of 1990 published in Government Gazette dated 7th Ohet 1990 (Extraordinary).

Woman or child unlawful member association service of sum mons.

unlawful association or takes part in meetings of any such association or contributes or receives or solicits any contribution for the purpose of any such association

or in any way assists the operations of any such association a court having jurisdiction may issue a summons to such woman or child to appear in court on a particular date. Such summons shall, if possible, be served on the woman and on the child and one copy shall be affixed at the door of the court issuing the summons and one copy at the door of the house in which the woman or child is supposed to reside on credible information.

17-H.—On the date so fixed the case against the woman or child shall be heard whether the woman Trial; sentence. or child be present or not and whether service may have been made on the person of the woman or child or not:

Provided that in the absence of the woman or child only

a sentence of fine shall be imposed and no other sentence.

17-1.—The fine imposed on any woman or child shall be recoverable from the husband, father or Fine recoverable from guardian of such woman or child or from any person in whose house the woman or child may be residing at the time of the commission of the offence as if the fine had been imposed on such husband, father guardian or person.

Explanation.—A child' would include any male up to 18 years of age and a 'woman' would include any female,

whatever her age may be.

An association shall not be deemed to have ceased to exis: by reason only of any formal act Continuance of associaof dissolution or change of title, but shall be deemed to continue so long as any actua combination for the purposes of such association continues between any members hereof.

THE JAMMU AND KASHMIR STATE EXPLOSIVE SUBSTANCES ACT 1971.

CONTENTS.

Preamble.

SECTION.

Short title and extent.

1. Definition of "Explosive Sub-2. stance".

Punishment for causing explo-3. sion likely to endanger life or property.

Punishment for attempt to cause explosion, or for making or

SECTION.

keeping explosive with intent to endanger life or property.

5. Punishment for making or possessing explosives under suspicious circumstances.

Pun ishment for abettors.

Restriction on trial of offence.

SECS. 1-5.]

THE JAMMU & KASHMIR STATE EXPLOSIVE SUBSTANCES ACT, 1971.

(Sanctioned by His Highness the Maharuja Sahib Bahadur vide Chief Minister's letter No. 4282/N-10-07 dated 10th September 1914.)

An Act relating to explosive substances.

Whereas it is necessary to enact an Act relating to explosive substances; It is hereby enacted as follows:—

1. (I) This Act may be called the Jammu and Kashmir State Explosive Substances Act, Samvat 1971.

(2) It extends to the whole of the Jammu and Kashmir

State.

- 2. In this Act the expression "Explosive Substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement, or material, used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.
- 3. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property ment for life or any shorter term, to which fine may be added.

Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger, life or property.

4. Any person who unlawfully and maliciously:—

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in the Jammu and Kashmir State of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his contro any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in the Jammu and Kashmir State, or to enable any other person by means thereof to endanger life or cause serious injury to property in the Jammu and Kashmir State;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually

caused or not, be punished with imprisonment for life, or any shorter term, to which fine may be added.

Punishment for making or possessing explosives substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his

possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with imprisonment for a term which may extend to 14 years, to which fine may be added.

Any person who by the supply of or solicitation for Punishment of abet money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

7. No Court shall proceed to the trial of any person for Restriction on trial of an offence against this Act except with the

offences. consent of '[the Government].

THE JUDICIAL OFFICERS' PROTECTION ACT, 1971.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide (hief Minister's letter No. 7045/F-29/10, dated 24th December 1914.)

An Act for the protection of Judicial Officers in the Jammu and Kashmir State.

For the greater protection of Magistrates and others act-Preamble. ing judicially, it is enacted as follows:—

1. No Judge, Magistrate, Governor, Wazir-i-Wazarat, or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Governor, Wazir-i-Wazarat or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

Bahadur' vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1991.

Published in Government Gazette dated 20th Magh 1971.

THE NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT, 1971.

CONTENTS.

SECTION.

- 1. Short title and extent.
- 2. Definitions.
- 5. Appeal.
- 6. Bar of other proceedings.
- 7. Power to annul declaration under the Jammu and Kashmir State Press and Publications Regulation, 1971.

SECTION.

- Power to forfeit printing presses in certain cases.
- 4. Power to seize.
- 8. Penalty.
- 9. Application of Code of Criminal Procedure.
- 10. Operation of other laws not barred.

THE NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT, 1971.

(Sanctioned by His Highness the Muharaja Sahib Bahadur, vide Chief Minister's No. 6509/N-102/07, dated 3rd December 1914.)

An Act for the prevention of incitements to murder and to other offences in newspapers.

Whereas it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers; it is hereby enacted as follows:—

1. (1) This Act may be called the Jammu and Kashmir State Newspapers (Incitements to offences) Act, Samvat 1971.

(2) It extends to the whole of the Jammu and Kashmir State.

2. (I) In this Act unless there is anything repugnant in the subject or context:—

(a) "Magistrate" means a District Magistrate, Sub-Divisional Magistrate, or 'Chief Judge of the Province:

(b) "Newspaper" means any periodical work containing

public news or comments on public news:

(c) "Printing Press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant

or materials used for the purpose of printing.

(2) Save as herein otherwise provided, all words and expressions in this Act shall have the same meanings as those respectively assigned to them in the ²Code of Criminal Proceddure Samvat 1969.

District and Sessions Judge.

Oode of Oriminal Precedure (Act XXIII of 1989).

3. (1) In cases, where, upon application made by order of or under authority from '[the Govern-ment], a Magistrate is of opinion that a Power to forfeit printing presses in certain newspaper printed and published within the Province contains any incitement to murder or to any offence under the Jammu and Kashmir State Explosive Substances Act, Samvat 1971, or to any act of violence, such Magistrate may make a conditional order declaring the Printing Press used, or intended to be used, for the purpose of printing or publishing such newspaper, or found in or upon the premises where such newspaper is, or at the time of the printing of the matter complained of was, printed and all copies of such newspaper, wherever found, to be forfeited to His Highness the Maharaja Sahib Bahadur, and shall in such order state the material facts and call on all persons concerned to appear before him, at a time and place to be fixed by the order, to show cause why the order should not be made absolute.

(2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in respect of such newspaper under 'section 3 of the Jammu and Kashmir State Press and Publications Act, 1971, or on any other premises in which such newspaper is printed and the affixing of such copy shall be deemed to be due service of the

said order on all persons concerned.

(3) In cases of emergency or in cases where the purposes of the application might be defeated by delay, the Magistrate may, on or after the making of a conditional order under subsection (I), make a further order ex parte for the attachment of the printing press or other property referred to in the conditional order.

(4) If any person concerned appears and shows cause against the conditional order, the Magistrate shall take evidence, whether in support of or in opposition to such order, in manner provided in section 356 of the Code of Criminal

Procedure, Samvat 1969.

(5) It the Magistrate is satisfied that the newspaper contains matter of the nature specified in sub-section (1), he shall make the conditional order of forfeiture absolute in respect of such property as he may find to be within the terms of the said sub-section.

(6) If the Magistrate is not so satisfied, he shall set aside the conditional order of forfeiture and the order of attach-

ment, if any.

[&]quot;In section 3 (1) "the Government" substituted for "His Highness the Maharaja Sahib Bahadur" vide Act X of 1996, published in Government Gazette dated 15th Bhador 1996.

Section 5 of Press and Publications Act 1 of 1989.
Section 356 of Code of Criminal Procedure (Act XXIII of 1989).

Power to seize.

Power to seize.

Power to seize.

Power to seize.

Police Officer not below the rank of a Deputy Inspector to seize and detain any property ordered to be attached under section 3, sub-section (3), or to seize and carry away any property ordered to be fortested under section 3, sub-section (5), wherever found and to enter upon and search for such property in any premises—

(a) where the newspaper specified in such warrant is

printed or published, or

(b) where any such property may be or may be reason-

ably suspected to be, or

(c) where any copy of such newspaper is kept for sale, distribution, publication or public exhibition or reasonably

suspected to be so kept.

(2) Every warrant issued under sub-section (1) so far as it relates to a search shall be executed in manner provided for the execution of search-warrants by the 'Code of Criminal Procedure, S. 1969.

5. Any person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to the High Court within fifteen days from the date when such order is made absolute.

6. Save as provided in section 5, no order duly made by Bur of other proceed. a Magistrate under section 3 shall be called

inge. in question in any court.

7. Where an order of forfeiture has been made absolute in relation to any newspaper, the Govern-Power to aunul declaration under the Jamma ment, may, by notification in the Jammu and Kahmir State Press and Kashmir Government Gazette, annul and Publications Regulation, 1971. any declaration made by the or publisher of such newspaper under the Jammu and Kashmir State Press and Publications Act, 1971, and may by such notification prohibit any further declaration being made or subscribed under the said Act in respect of the said newspaper, or of any newspaper which is the same in substance as the said newspaper, until such prohibition be withdrawn.

Section 7 during the continuance of that prohibition shall be liable, on conviction, to the penalties prescribed by section 20 of the Jammu and Kashmir State Press and Publications Act, Samvat 1971.

Oode of Oriminal Procedure (Act XXIII of 1989).
In section 7 "the Government" substituted for "His Highness the Maharaja Sahib Bahadur," vide Act X of 1996, published in Government Gazette dated 15th Bhadon 1996.
Press and Publications Act 1 of 1989.

All proceedings under this Act shall be conducted so far as may be in accordance with the pro-Application of Code of Criminal Procedure. visions of the 'Code of Criminal Procedure, Samvat 1969.

10. No proceedings taken under this Act shall operate to prevent any person from being prosecu-Operation of other laws not barrel. ted for any act which constitutes an offence under any other law.

THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1971.

CONTENTS.

Preamble.

SECTION.

- 1. Short title and extent.
- 2. Definitions.
- 3. Notice to be given of public meetings; Power to 01130 report to be taken.

SECTION.

- Power to prohibit public meetings.
- 5. Penalties.
- 6. Penalty for delivering of speeches in public places.
- 7. Cognizance of offences.

THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1971.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's letter No. 4282/N-102-07, dated 10th September 1914).

An Act relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity.

Whereas it is expedient to provide for the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity; it is hereby enacted as follows:-

(I) This Act may be called an Act for the Prevention of Seditious Meetings, Samvat 1971.

Short title and ext nt.

(2) It extends to the whole of the Jammu and Kashmir State.

^{&#}x27;Oode of Crimina: Procedure (Act XXIII of 1989).

2. (1) In this Act, the expression "public meeting" means a meeting which is open to the pub-Definitions. portion of the any class or

public.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

(3) "Governor" means the Governors of Jammu Kashmir and the Wazirs of Leh and Gilgit within their respec-

tive jurisdiction.

[(4) "A public place or a place of public resort" means a place which is open to the public or to any class or portion of

the public.]

3. No public meeting for the furtherance or discussion of any subject likely to cause disturbance Notice to be given of or public excitement or for the exhibition public meetings. or distribution of any writing or printed matter relating to any such subject shall be held-

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the Governor '[or Sub-Divisional Magistrate] or the Superintendent of Police at least 3 days previously; and

(b) unless permission to hold such meeting has been obtained in writing from the Governor '[or Sub-Divisional

Magistrate] or the Superintendent of Police.

(2) Any Magistrate of the 1st Class or a Police Officer not Power to cause report below the rank of an Inspector may, by order in writing, depute one or more Police Officers not being below the rank of Sergeants, or other persons to attend any such meeting for the purpose of causing a report to be taken of the proceedings.

The Governor or a Sub-Divisional Magistrate or the Power to prohibit pub- Superintendent of Police may, at any time, by order in writing, of which public notice shall forthwith be given, prohibit any public meeting if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.

5. (1) Any person concerned in the promotion or conduct of a public meeting held in the Jammu Penalties. and Kashmir State contrary to the provisions of section 3 shall be punished with imprisonment for a term which may extend to 6 months, or with fine, or with

1 Section 2 (4) added by Regulation 10 of 1988 published in Government Gazette dated 25th Har 1988. 2"Or Sub-Divisional Magistrate" added by Chief Minister's letter

No. 5575-F-269-09 dated 15th December 1915.

(2) Any public meeting which has been prohibited under section 4 shall be deemed to be an unlawful assembly within the meaning of 'Chapter VIII of the Ranbir Dand Bidhi and of 'Chapter IX of the Code of Criminal Procedure, Samvat

1969.

Penalty for delivery of otherwise than at a public meeting held in accordance with the provisions of section 3, without the permission of the Governor or the Superintendent of Police, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement to persons then present, may be arrested without warrant and shall be punished with imprisonment for a term which may extend to 6 months, or with fine, or with both.

7. No Court inferior to that of a Magistrate of the 1st Cognizance of offences Class shall try any offence against this Act.

Note.—Offences under this Act were made triable by a Sessions Judge without commitment and assessors not withstanding procedure prescribed in this Act by Notification No. 13-L/1988. This Notification was, however, ammended by Act 10 of 1995 and procedure prescribed in this Act for trial of offences under the Act is restored. (Editor).

THE JAMMU AND KASHMIR STATE TELEGRAPH ACT, 1974.

CONTENTS.

Preamble.

SECTION.

PART I.

SECTION.

PART III.

PRELIMINARY

- 1; Title and commencement.
- 2. Definitions.
- Power for Government to order interception of messages.

PART II.

Powers and privileges of the Government.

- 4. Powers to make rules for the conduct of telegraphs.
- 5. Government not responsible for loss or damage.

POWER TO PLACE TELEGRAPH LINES AND POSTS.

- Powers for telegraph authority to place and maintain telegraph lines and posts.
- Power to enter on property in order to repair or remove telegraph lines on posts.

PROVISIONS APPLICABLE TO PROPERTY VESTED IN OR UNDER THE CONTROL OR MANAGEMENT OF LOCAL AUTHORITIES.

98. Powers to local authority to give permission under section (6) clause (b) subject to conditions.

¹Chapter VIII of Ranbir Penal Code. ²Chapter IX of Code of Criminal Procedure Act XXIII of 1989. SECTION.

SECTION.

- Power for local authority to require removal or alteration of telegraph line or post.
- Power to alter position of gas or water pipes or drains.
- Disputes between telegraph authority and local authority.

PROVISIONS APPLICABLE TO OTHER PROTERTY.

- 12. Exercise of powers conferred by section 6 and of disputes as to compensation, in case of property other than that of a local authority.
- Removal or alteration of telegraph line or post on property other than that of a local authority.

PROVISIONS APPLICABLE TO ALL PROPERTY.

- Removal of trees interrupting telegraphic communication.
- Telegraph lines or posts placed before the passing of this Act.
- 15-A. Persons exercising legal rights likely to damage telegraph or interfere with telegraphic communication to give notice.

PART IV.

PENALTIES.

 Establishing, maintaining or working unauthorised telegraph.

- 17. Using unauthorised telegraphs.
- Intrusion into signal room, trespass in telegraph office, or obstruction.
- Unlawfully attempting to learn contents of messages.
- Intentionally damaging or tampering with telegraphs.
- 20-A. Injury to or interference with a telegraph line or post.
 - 21. Telegraph officer or other official making away with or altering or unlawfully intercepting or disclosing messages or divulging purport of signals.
 - 23. Telegraph officer fraudulently sending messages without payment.
 - 23. Misconduct.
 - 24. Sending fabricated message.
 - Retaining of message delivered by mistake.
 - 26. Attempts to commit foffen-

PART V.

SUPPLEMENTAL PROVISIONS.

27. Power to employ additional Police in places where mischief to telegraph is repeated-ly committed.

THE JAMMU AND KASHMIR STATE TELEGRAPH ACT, 1974.

(Sanctioned by order of His Highness the Maharaja Bahadur tublished in Government Gasette dated 25th Baisakh 1971).

Whereas it is expedient to provide for the more effective control and management of the Jammu and Kashmir State Telegraphs and for the acquisition of certain powers; it is hereby enacted as follows:-

PART I.

PRELIMINARY.

1. (1) This Act may be called the Jammu and Kashmir State Telegraph Act, 1974.

(2) It shall come into force on 1st Jeth 1974.

2. In this Act, unless there is something repugnant in

the subject or context:-

(i) "Telegraph" means an electric, galvanic or magnetic telegraph and includes appliances and apparatus for transmitting or making telegraphic, telephonic or other communications by means of electricity, galvanism magnetism.

(2) "Telegraph Officer" means any person employed either permanently or temporarily in connection with a tele-

graph established, maintained or worked by the State.

(3) "Message" means any communication sent by a telegraph or given to a Telegraph Officer to be sent by telegraph, or to be delivered.

(4) "Telegraph Line" means a wire or wires used for the purpose of telegraph, with any casing, coating tube or pipe enclosing the same, and appliances and apparatus connected therewith for the purpose of fixing or insulating the same.

(5) "Post" means a post, pole, standard, stay, strut or other above ground contrivance for carrying, suspending or

supporting a telegraph line.

(6) "Telegraph Authority" means the Minister-in-charge of the Telegraph Department, and includes any officer empowered by him to perform all or any of the functions of the

Telegraph authority under this Act.

(7) "Local Authority" means any Municipal Committee or other authority legally entitled to, or entrusted by the Government with the control or management of, any Municipal or local fund.

3. (1) On the occurrence of any public emergency or in the interest of the public safety, '[the Government] or any officer specially authorised in this behalf by '[the Government] may order that any message or class of messages to or from any person or class of persons or relating to any particular subject, brought for transmission, by, or transmitted or received by, any State Telegraph shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to '[the Government] or any officer thereof mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency or whether any act done under sub-section (1) was in the interest of the public safety, a certificate signed by 2 an officer of the Government empowered in this behalf shall be

conclusive proof on the point.

PART II.

POWERS AND PRIVILEGES OF THE GOVERNMENT.

4. (1) '[The Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette. make rules consistent with this Act, for the conduct of all telegraphs established, maintained or worked by the State.

(2) Rules under this section may provide for all or any

of the following among other matters, that is to say:-

(a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted.

(b) the precautions to be taken for preventing the im-

proper interception or disclosure of messages.

(c) the period, for which, and the conditions subject to which telegrams and other documents belonging to, or being in the custody of, Telegraph Officers shall be preserved; and

(d) the fees to be charged for searching for telegrams or other documents in the custody of any Telegraph Officer.

5. '[The Government] shall not be responsible for any loss or damage which may occur in consequence of any Telegraph Officer failing in his duty with respect to the receipt,

'In sections 3, 4, 5, 11, 21 and 27 the words "the Government" substituted for the words "the Durbar" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

Note.—See also Notification No. 11-L-1984 published in Government

Gazette dated 9th Maghar 1984.

In section 3 (2) for the words "the Minister or the Judge High Court" the words "an officer of the Government empowered in this behalf" substituted vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

transmission or del'very of any messages; and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

PART III.

POWER TO PLACE TELEGRAPH LINES AND POSTS.

6. The Telegraph authority, may, from time to time, place and maintain a telegraph line under, over, along or across and posts in or upon any immoveable property:

Provided that:-

(a) the State shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the Telegraph authority places any telegraph line or post; and

(b) except as hereinafter provided, the Telegraph authorithy shall not exercise these powers in respect of any property vested in or under the control or management of any local

authority, without the permission of the authority; and

(c) in the exercise of the powers conferred by this section, the Telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (b), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

7. The Telegraph authority may, at any time for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

PROVISIONS APPLICABLE TO PROPERTY VESTED IN OR UNDER THE CONTROL OR MANAGEMENT OF LOCAL AUTHORITIES.

8. Any permission given by a local authority under section 6 clause (b), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the Telegraph authority under those powers.

9. When under the foregoing provisions of this Act a telegraph line or post has been placed by the Telegraph authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority and the local authority having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the Telegraph authority to remove it or alter its position as the case may be.

10. The Telegraph authority may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control or managment of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water, or of any

drain(not being a main drain):

Provided that:—

(a) when the Telegraph authority desires to alter the position of any such pipe or drain it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is:

(b) a local authority or person receiving notice under clause (a) may send a person to superintend the work, and the Telegraph authority shall execute the work to the reasonable

satisfaction of the person so sent.

11. (1) If any dispute arises between the Telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 6 clause (b) or prescribing any condition under section 8 or in consequence of the Telegraph authority omitting to comply with a requistion made under section 9 or otherwise in respect of the exercise of the power conferred by this Act, it shall be determined by such officers as '[the Government] may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to '[the Government], and the order of

'[the Government] shall be final.

PROVISION APPLICABLE TO OTHER PROPERTY.

12. (1) If the exercise of the powers mentioned in section 6 in respect of property referred to in clause (c) of that section is resisted or obstructed, the District Magistrate, may

See footnote under section 3.

in his discretion, order that the Telegraph authority shall be

permitted to exercise them.

(2) If after the making of an order under sub-section (1) any person resists the exercise of those powers, or, having the control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under 'section 143 of the Ranbir Dand Bidhi.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 6 clause (e) it shall on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property

is situate, be determined by him.

(4) If any dispute arises as to the person entitled to receive compensation or as to the proportions in which the persons interested are entitled to share in it, the Telegraph authority may pay into the court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient, or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge

under sub-section (3) or sub-section (4) shall be final:

Provided that, nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the Telegraph authority, from the

person who has received the same.

Act, a telegraph line or post has been placed by the Telegraph authority under, over, along, across, in or upon any property not being property vested in or under the control or management of local authority, and any person entitled to do so, desires to deal with the property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the Telegraph authority to remove or alter the line or post accordingly:

Provided that, if compensation has been paid under section 6 clause (c) he shall when making the requisition, tender to the Telegraph authority the amount requisite to defray the expense of the removal or alteration or half of the amount paid as compensation, whichever may be the smaller

sum.

(2) If the Telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate,

to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form, and the order so made shall be final.

PROVISIONS APPLICABLE TO ALL PROPERTY.

14. (1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt telegraphic communication, a Magistrate of the 1st or 2nd class may, on the application of the Telegraph authority cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the person interested in the tree such compensation as he thinks reasonable

and the award shall be final.

- (3) In the case of trees of the Forest Department, that Department shall, where there is danger to the line, remove the tree or trees on the requisition of the Telegraph Department and if the tree or trees cannot be otherwise disposed of, the Forest Department will receive credit of its value by book transfer.
- 15. Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the State, shall be deemed to have been placed in exercise of the powers conterred by, and after observance of all the requirements of, this Act.
- 15-A. (I) Any person desiring to deal in the legal exercise of a right with any property in such a manner as is likely to cause damage to a telegraph line or post which has been duly placed in accordance with the provisions of this Act, or to interrupt or interefere with the telegraphic communication, shall give not less than one months' notice in writing of the intended exercise of such right to the Telegraph authority, or to any Telegraph officer, whom the Telegraph authority may empower in this behalf.

(2) If any such person without having complied with the provisions of sub-section (I) deals with any property in such a manner as is likely to cause damage to any telegraph line or post, or to interrupt or interfere with telegraphic communication, a Magistrate of the first or second class may on the application of the Telegraph authority, order such person to abstain from dealing with such property in such manner for a period not exceeding one month from the date of his order and torthwith to take such action with regard to such property as may be in the opinion of the Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

(3) A person dealing with any property in the manner referred to in sub-section (1) with the bona fide intention of averting imminent danger of personal injury to himself or any other human being snall be deemed to have complied with the the provisions of the said sub-section if he gives such notice of the intended exercise of the right as is in the circumstances possible, or where no such previous notice can be given without incurring the imminent danger referred to above, if he forthwith gives notice of the actual exercise of such right to the authority or officer specified in the said sub-section.

PART IV.

PENALTIES.

16. If any person establishes, maintains or works a telegraph within the State in contravention of this Act, he shall be punished with line which may extend to one thousand rupees, and with a further fine which may extend to live hundred rupees, for every week during which the line is maintained or worked.

that a telegraph has been established or is maintained or worked in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereof or delivers any message for transmission by such telegraph or delivery of any such message sent thereby, he shall be punished with fine which may extend to fifty rupees.

18. If any person—
(a) without permission of competent authority enters the signal room of a telegraph office of the State, or

(b) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or

(c) refuses to quit such room or enclosure on being requested to do so by any officer or servant em-

ployed therein, or

(d) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

he shall be punished with fine which may extend to five hund-

red rupees.

19. If any person does any of the acts mentioned in section 18 with the intention of unlawfully learning the contents of any message or of committing any offence punishable under this Act he may (in addition to the fine with which he is punishable under section 17) be punished with imprisonment for a term which may extend to one year.

20. If any person intending-

(a) to prevent or obstruct the transmission of delivery of any message, or

(b) to intercept or to acquaint himself with the contents of any message, or

(c) to commit mischief,

damages, removes, tampers with or touches with any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof, he shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

20-A. If, in any case not provided for by section 20, any person deals with any property and thereby wilfully or negligently damages any telegraph line or post duly placed on such property in accordance with the provisions of this Act, he shall be liable to pay the Telegraph authority such expenses (if any) as may be incurred in making good such damage, and shall also, if the telegraphic communication is by reason of the damage so caused interrupted, be punishable with a fine which may extend to one thousand rupees:

Provided that the provisions of this section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of right if he has complied with the provision of section 15-A (1).

21. If any Telegraph officer or any person not being a Telegraph officer but having official duties connected with

any office which is used as a telegraph office,

(a) wilfully secrets, makes away with or alters any message which he has received for transmission or delivery, or

(b) wilfully and otherwise than in obedience to an order of '[the Government], or of an officer es-

Section 20-A added by Notification published in Government Gazette dated 11th Katik, 1976. *See footnote under section 8.

pecially authorised by '[the Government] make the order, omits to transmit or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent court, discloses the contents or any part of the contents of any message to any person not entitled to receive the same, or

(c) divulges the purport of any telegraphic signal to any person not entitled to become acquainted

with the same,

he shall be punished with imprisonment for a term which

may extend to three years, or with fine or with both.

22. If any Telegraph officer transmits by telegraph any message on which the charge prescribed by the State, has not been paid, intending thereby to defraud the State, he shall be punished with imprisonment for a term which may extend to

three years or with fine or with both.

23. If any Telegraph officer or any person not being a Telegraph officer but having official duties connected with any office which is used as a telegraph office is guilty of any act of d unkenness, carelessness or other misconduct whereby the correct transmission or the delivery of a message is impeded or delayed, or if any Telegraph officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to to three months or with fine which may extend to one hundred rupees or with both.

24. If any person transmits or causes to be transmitted by telegraph a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years 2[or with fine] or with both.

25. If any person fraudulently retains, or wilfully secrets, makes away with, or detains a message which ought to have been delivered to some other person, or being required by a Telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

A Telegraph officer shall be deemed a public servant within the meaning of 'sections 125, 126, 128 and 129 of the

Ranbir Dand Bidhi.

26. Whoever attempts to commit any offence punishable under this Act, shall be punished with the punishment herein provided for the offence.

See footnote under section 3. In section 24 words 'or with fine' inserted vide Act II of 1997, published in Government Gazette dated 21st Baisakh 1997. Section 161, 162, 164 and 165 of the Ranbir Ponal Code.

PART V.

SUPPLEMENTAL PROVISIONS.

any act causing or likely to cause wrongful damage to any telegraph is repeatedly or maliciously committed in any place, and that the employment of an additional police force in that place is thereby rendered necessary, '[the Government) may send such additional police force as it thinks fit to the place and employ the same therein so long as, in the opinion of '[the Government] the necessity of doing so continues.

(2) The inhabitants of the place shall be charged with the cost of additional police force, and the District Magistrate shall, subject to the order of '[the Government], assess the proportion in which the cost shall be paid by the inhabitants

according to his judgment of their respective means.

(3) All moneys payable under sub-section (2) shail be recoverable under the Warrant of the Governor of the Province or Wazir of Leh as the case may be, by distress and sale of the the moveable property of the defaulter within the local limits of his jurisdiction.

(4) [The Government] may, by order in writing, define the limits of any place for the purposes of this

section.

NOTIFICATION.

DISSUADING PERSONS FROM MILITARY AND POLICE SERVICE MADE PENAL.

[Published in Government Gazette dated 2nd Assuj 1974.]

In order to ensure free enlistment in the Military Service of His Majesty the Emperor of India and the Military and Police Service of His Highness the Maharaja Sahib Bahadur, Jammu and Kashmir State, it is hereby ordered as follows:—

1. No person shall dissuade or attempt to dissuade any person from entering the Military Service of His Majesty the Emperor of India or the Military or Police Service of His Highness the Maharaja Sahib Bahadur of Jammu and Kashmir State:

Provided that this shall not apply to advice true in substance and given in good faith for the benefit of the individual to whom it is given.

Any person who abets or attempts to abet the commission of the act prohibited above shall be deemed to have acted as if he had himself committed the act.

3. Whoever is guilty of any of the acts above prohibited shall be punishable with imprisonment for a term which may

extend to three years or with fine or both.

No Court shall take cognizance of any offence punishable under these rules without the previous sanction of His Highness the Maharaja Sahib Bahadur of Jammu and Kashmir.

THE PREVENTION OF ADULTERATION OF FOOD ACT, 1975.

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THE PREVENTION OF ADULTERATION OF FOOD ACT, 1975.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's letter No. 198/P-51-13, dated 5th May *1918*).

An Act to make provision for preventing the adulteration of food.

Whereas it is expedient to make provision in the Jammu and Kashmir State for Preventing the Adulteration of Food, it is hereby enacted as follows:-

1. (1) This Act may be called the Jammu and Kashmir State Prevention of Adulteration of Food Short t't'e and ext : t

Act.

(2) It shall come into force at once within the Municipalities of Srinagar and Jammu ¹[* * *] and its operation may be extended to such other local areas in the Jammu and Kashmir State as 2[the Government] may by notification in the Jammu and Kashmir Government Gazette direct whether generally in respect of all articles of food or in that of any specified article.

2. In this Act unless there is something repugnant in

the subject or context-

Definitions.

"Food" includes every article used for food or drink by

man other than drugs or water.

"Public Analyst" means every person appointed by [the Government] to perform the duties and to exercise the powers of a public analyst as prescribed by this Act.

"Local area" includes a Municipality, Town Area, and

any area in which a fair or market is held.

"Local Authority" in the case of a Municipality means the Municipal Board and in the case of any other local area the District or Sub-Divisional Magistrate.

3. '[The Government] may, by notification as aforesaid, appoint any person whom it may think fit to Power of the Governbe public analyst in respect of any area ment to appoint public analys L prescribed thereby.

4. (I) Whoever sells to the prejudice of the purchaser any article of food which is not of the Penalty for sale or

nature, substance or quality of the article manufacture of food not demanded by such purchaser, or sells or of the proper nature, substance or quality. offers or exposes for sale or manufactures

for sale any article of food which is not of the nature, substance or quality which it purports to be, shall be punished for the first offence with fine which may extend to one hundred rupees and for a second or any subsequent offence with fine which may extend to five hundred rupees:

Provided that no offence shall be deemed to have been committed under this section in the following cases, that is

(a) Where any matter or ingredient not injurious to health has been added to the food because the same is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption, and not frau-

Words "and in the towns of Muzaffarabad, Baramulla, Anantnag and Milpur" omitted from section 1 (2) vide Notification No. 64, dated 25th November 1920, published in Government Gazette dated 22nd Magher 1977.

[&]quot;In sections 1 (2), 2, 3, 7, 8 and 14 for the word "Darbar" the words 'the Government' substituted vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996. Norg -See also Notification No. 11-L/84 published in the Government Gazette dated 9th Maghar 1984.

dulently to increase the bulk, weight or measure of the food or conceal the inferior quality thereof.

(b) Where in the process of production, preparation or conveyance of such article of food some extraneous substance has unavoidably become intermixed therewith.

(c) Where any matter or ingredient not injurious to health has been added to or mixed with such article of food and before the sale thereof the seller has brought to the notice of the purchaser, either by means of a label distinctly and legibly written or printed on or with the article or otherwise, the fact that such matter or ingredient has been so added or mixed.

(d) Where the article of food is a proprietary food.

(2) In a prosecution under this section the Court may presume that any article of food found in the possession of a person who is in the habit of manufacturing like articles has been manufactured for sale.

5. If in compliance with a demand for gh e or butter any article is supplied which contains any sub-Presumption rising on stance not exclusively derived from milk, sale of ghee containing substance not exclusively such article shall be deemed to have been derived from milk. sold to the prejudice of the purchaser within the meaning of section 4.

In any prosecution under section 4, it shall be no defence to allege that the vendor was igno-Bar of certain pleas in rant of the nature, substance or quality of defence in prosecutionunder section 4. the article sold by him, or that the purchaser having bought only for analysis was not prejudiced by the sale:

Provided that the vendor shall not be deemed to have committed an offence under section 4, if he proves to the satisfaction of the Court:-

(a) that the article sold was purchased by him as the same in the nature, substance and quality as that demanded by the purchaser and with a written warrant to the effect that it was of such nature, substance and quality;

(b) that he had no reason to believe at the time when he sold it that the article was not of such nature, substance

and quality as aforesaid, and

(c) that he sold it in the same state in which he purchased it.

7. Any purchaser of an article of food shall be entitled on payment of such fees as '[the Govern-Power of purchaser to ment] may prescribe to have such article have article of foud analysed. analysed by the public analyst appointed

for the area within which such article is purchased, and to receive from him a certificate of the result of his analysis.

8. Subject to any rules made by the '[Government] under section 14 of this Act, any person procure Power duly authorised either generally or specialfood for simples ly in this behalf by a local authority may analysis. procure any sample of food and may submit the same to be analysed by the public analyst appointed for the area within which such sample has been procured.

9. (1) Any person purchasing any article of food with

Procedure when sample of food is purchased for analysis.

the intention of submitting the same to be analysed by a public analyst shall, after the purchase has been completed, forthwith notify to the seller or his agent selling

the article his intention to have the same analysed as aforesaid, and shall offer to divide the article into three parts to be then and there separated and each part to be marked and sealed or fastened up in such manner as its nature permits, and shall, if required to do so, proceed accordingly; and shall deliver one of the parts to the seller or his agent.

He shall afterwards r tain one of the said parts for future comparison and submit the 3rd part, if he deems it right to

have the article analysed, to the public analyst.

(2) If the seller or his agent do not accept the offer of the purchaser as aforesaid to divide the article purchased in his presence, the public analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he supplies his certificate, to be delivered to the purchaser who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

10. If any person duly authorised as provided by sec-

Penalty for refusing to sell sample of food for analysis.

tion 8 or by a rule framed under section 14, as the case may be, applies to purchase any article of food expesed for sale and tenders the price for a quantity not more

than is reasonable requisite for the purpose of analysis, and the person exposing the same for sale refuses to sell the same, the person so refusing shall be punished with fine which may extend to fifty rupees.

11. (1) Every public analyst to whom any article of food has been submitted for analysis under sec-Duty of public analyst tion 7 or under section 8 or a rule framed to supply certificate of under section 14, as the case may be shall analysis. deliver to the person so submitting it a certificate, in the form

prescribed in the schedule attached See footnote under section 2.

to this Act, specifying the result of his analysis and shall send a copy of the same to the local authority concerned.

(2) Any document purporting to be such certificate under the hand of a public analyst may be used as evidence of the facts therein stated in Certific te to te evidence of the facts therein stated.

any inquiry, trial or other proceeding

under this Act:

Provided that any Court before which a case under this

Act may be pending, whether exercising original, appellate or revisional jurisdic-Power to call for retion, may in its discretion, at the request, post from Chemical Examiner. either of the accused or the complainant, cause any article of food to be sent for

analysis to the Chemical Examiner to the Government, who shall thereupon analyse the same and report the result of such analysis to the said Court. The expense of such analysis shall be paid by the accused or the complainant, as the Court may by order direct.

12. No prosecution under section 4 or section 10 shall be instituted without the order or consent Cognizance of offences. in writing of the local authority, or, in the case of a Municipal Board, of the person or persons authorised

in this behalf by the said Municipal Board.

13. No Magistrate whose powers are less than those of a Magistrate of the second class shall try Jurisdiction. any offence under this Act.

14. '[The Government] may after previous publication, make rules consistent with this Act:-Power of Government to make rules.

> (a) providing for the appointment of persons to be called official inspectors, to carry out the provisions of section 8 and of the Act generally.

> (b) prescribing the qualifications of such official inspectors and the powers to be exercised by them.

> (c) regulating the areas within which such official inspectors shall respectively exercise their powers.

(1) No summons shall issue for the attendance of any person accused of an offence under Limitation of prosecusection 4 or section 10, unless the same is tion. applied for within 30 days from the date upon which the order or consent referred to in section 12 shall have been made or given.

(2) Every summons issued in a prosecution under sec-Particulars to be con- tion 4 or section to shall specify the particulars of the offence charged and the name tained in summons.

of the prosecutor; and the day fixed for the hearing of the case shall not be less than seven days from the day on which the summons is served upon such person.

SCHEDULE.

FORM OF CERTIFICATE.

| 10 | |
|------|---|
| | I, the undersigned, public analyst for the |
| do | hereby certify that I received on the———day of |
| _ | ro from a sample of |
| for | analysis (which then weighed———)and have ana- |
| lyse | ed the same and declared the result of my analysis to be as |
| | ows:— |

I am of opinion that the same is a sample of genuine

I am of opinion that the said sample contained the parts as under, or the percentages of foregin ingredients as under:-Observations.

| Signed this | day of | |
|-------------|----------|--|
| Signed this | | |
| | A.B. ——— | |
| | at | |

THE MOTOR VEHICLES ACT, 1975.

Act No. I of 1975.

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Here insert the name of the person submitting the article for analysis.

*Here insert the name of the person derivering the sample. If the sample is received by post or by railway entry should be made accordingly.

When the artic'e cannot be conveniently weighed this passage may be erased or the blank may be left unfilled.

'Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article potable, or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary or otherwise, and whether the ingredients and materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter or any article liable to decomposition the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis,

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THE MOTOR VEHICLES ACT, 1975.

Act No. I of 1975.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's No. 6968, dated 22nd August, 1919.)

An Act to consolidate and amend the law relating to Motor-vehicles in the State of Jammu and Kashmir.

WHEREAS it is expedient to consolidate and amend the law

relating to Motor-vehicles in the State of Jammu and Kashmir; it is hereby enacted a follows:—

PART I.

PRELIMINARY.

Short title, extent and State Motor-vehicles Act, 1975.

(2) It shall come into force at once.

2. "Motor-vehicle" includes a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially.

"Prescribed" means prescribed by rules under this Act.

"Public Place" means a road, street, way or other place, whether a thoroughfare or not to which the public are granted

access, or over which they have a right to pass.

"["Jhelum Valley Road" for purposes of this Act and rules thereunder means the main road from Anantnag to Srinagar and Srinagar to Kohala and includes the section of the metalled read between Singhapur turning and Tangmarg.]

²["Banihal Cart Road" means for purposes of this Act and the rules thereunder the Jammu-Udhampur-Banihal-

Khannabal main road.]

²["Traffic Officer" includes the Traffic Superintendent, the Traffic Inspectors and such other officers as may be empowered by the Inspector-General of Police to exercise powers conferred on the Traffic Officers under the Act or any rule made thereunder.]

PART II.

PROVISIONS OF GENERAL APPLICATION.

3. (1) No person under the age of 18 years shall drive a Prohibition of driving Motor-vehicles by persons Motor-vehicle in any public place.

under 18.

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(2) No owner or person incharge of a Motor vehicle shall allow any person under the age of 18 years to drive the same in any public place; and, in the event of a contravention of subsection (1), the Court may presume that the Motor-vehicle was driven with the consent of the owner or person incharge.

4. The person incharge of a Motor-vehicle shall cause the vehicle to stop and to remain station-Duty to stop vehicle for ary so long as may reasonably be necesregulating traffic and in

case of aceident. ary-

(a) when required to do so by any Police Officer 1[or any Traffic Officer] for the purpose of regulating traffic or of ascertaining his name and address with a veiw to prosecuting such person under this Act or for any purpose connected with the enforcement of the provisions of this Act or the rules thereunder, or

(b) when required to do so by any person, having charge of any animal, if such person apprehends that the animal is, or will be, alarmed by the Motor-vehicle, or

(c) when he knows or has reason to believe that an accident has occurred to any person or to any animal or vehicle incharge of a person owing to the presence of the Motor-vehicle, and he shall also, if so required give his name and address and the name and address of the owner of such Motor-vehicle.

drives a Motor-vehicle in a public place 5. Whoever recklessly, negligently, or at a speed or in Reckless driving a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place and the amount of traffic which actually is at the time, or which might reasonably be expected to be, in the place, shall on conviction, be punishable with fine which may extend to five hundred rupees.

PART III.

LICENSING AND CONTROL.

6. No person shall drive a Motor-vehicle in a public place unless he is licensed in the prescribed manner, and no owner or person in-Licensing of drivers. charge of a Motor-vehicle shall allow any person who is not so licensed, to drive it:

Provided that, subject to rules made by 2[the Government] in this behalf, this section shall not apply to a person

receiving instructions in driving a Motor-vehicle.

words in clause (a) of section 4 substituted by Notification dated 7th Assuj 1989 publish-In section 6, 11, 12 13 and 14 for the words "His Highness" the words "the ed in Government Gazatte dated 21st Assuj 1989. Government" substituted vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

7. The holder of a licence shall not Transfer of licence. allow it to be used by any other person.

8. The driver of a Motor-vehicle shall produce his licence upon demand by any Police Officer '[or Production of licence.

any Traffic Officer].

9. Every licence to drive a Motor-vehicle shall be valid in such area as may be specified therein. Extent of validity of licence to drive

10. The owner of every Motor-vehicle Registration of Motorvehicle. shall cause it to be registered in the prescribed manner.

(I) '[The Government], subject to the condition of previous publication, shall make rules for Power of Government the purpose of carrying into effect the to a ake rules provisions of this Act and of regulating, in the whole or any part of the State, the use of Motor-vehicles, or any class of Motor-vehicles in public places.

(2) In particular and without prejudice to the generality of the foregoing powers, 2[the Government] may make rules

for all or any of the following purposes, namely:-

(a) providing for the registration of Motor-vehicles, and the conditions subject to which such vehicles may be registered, the fees payable in respect of and incidental to registration, the issue of certificates of registration, the notification of any changes of ownership;

(b) providing for facilitating the identification of Motorvehicles by the assignment of distinguishing number to such vehicles, and the displaying of number and name plates there-

on, or in any other manner;

(c) regulating the construction and equipment of Motor-vehicles including the provision and use of lights, bells,

horns, brakes, speed-indicators or other appliances;

(d) prescribing the authority by which and the conditions subject to which drivers of Motor-vehicles or any class of any such drivers may be licensed, the fees payable in respect of such licences, and (subject to the provisions of section 9) the area within which and the duration for which licences shall be valid:

(e) prescribing the conditions subject to which and the fees (if any) on payment of which Motor-vehicles may be let or plied for hire in public places generally or in any particular public place;

(f) prescribing the precautions to be observed |when

Motor-vehicles are standing in any public place;

Words in brackets in section & substituted by Notification 7-L/89 published in Government Gazette dated 21st Assaj 1989. See footnote under section 6.

(g) limiting the speed at which Motor-vehicles may be

driven generally or in any particular public place;

(h) prohibiting or regulating the driving of Motor-vehicles in public places, where their use may, in the opinion of of '[the Government] be attended with danger or inconvenience to the public; and

(i) providing generally for the prevention of danger injury or annoyance to the public or any person or of danger or

injury to property or of obstruction to traffic.

(3) All rules made under this section shall be published in the Jammu and Kashmir Government Gazette; and on such publication shall have effect as if enacted in this Act.

- Posting of notices manner, public notice of any rules, made by '[the Government] under section 11, prohibiting or regulating the driving of Motor-vehicles in any public place or limiting the speed of Motor-vehicles in any such place and for the purpose of giving effect to any such rule, shall display conspicuous notices at or near the place to which the rule refers.
- Power of '[Government] and Kashmir Government Gazette, exto exclude areas or Motor-vehicles from this Part tion, from the operation of this Part, and may by a like notification, exempt either generally or for a specified period any Motor-vehicle or class of Motor-vehicles from the operation of all or any of the provisions of this Part.

PART IV.

MOTOR-VEHICLES TEMPORARILY LEAVING OR VISITING THE STATE.

14. (1) [The Government] may make Power of [Govern- rules for all or any of the following pur-

mont] to make rules. poses, namely:-

(i) for the grant and authentication of any travelling passes, certificates or authorities for the use of persons temporarily taking their Motor-vehicles out of the State, or to drivers of such vehicles when proceeding out of the State for the purpose of driving such vehicles, and

(ii) prescribing the conditions subject to which Motor-vehicles brought temporarily into the State by persons in-

SECS 11-16-A.]

tending to make a temporary stay there may be possessed,

used and driven.

(2) All rules made under this section shall be published in the Jammu and Kashmir Government Gazette and on such publication, shall have effect as if enacted in this Act.

15. Nothing in this Act or in any

S.ving. rule made thereunder relating to:-

(a) the registration of Motor-vehicles,

(b) requirements as to construct on, identification or equipment of such vehicles, or

(c) he tlicensing or qualifications of drivers of such

vehicles, shall apply in the case of any Motor-vehicle such as is referred to in clause (ii) of ub-section (1) of section 14 or any person possessing, using or driving the same, provided that the requirements of any rule made under the said clause and applicable to such vehicle or person are complied with.

PART V.

MISCELLANEOUS.

16. Whoever contravene any of the provisions of this Act or of any rule made thereunder shall, Penalties if no other penalty is elsewhere provided in this Act for such contravention be punishable with fine which may extend to Rs. 100 and in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder with fine which may extend to Rs. 200.

[Provided that in the event of such contravention on the Jhelum Valley Road ""or the Banihal Cart Road" the aforesaid fine may extend to Rs. 300 in case of first conviction and to

Rs. 500 for every subsequent conviction.]

[16-A. The registered or other proprietor of the Motorvehicles with respect to which an offence punishable under any of the provisions of this Act or of any rule made thereunder has been committed on the Jhelum Valley Road or the Banihal Cart Road also shall be liable and bound to pay the fine or such part of the fine as remains unrealised from the person convicted. In such cases the fine or such part of the

"Words "on the Banihal Cart Road" added by Notification 7-L/89 published in Government Gazette dated 2:st Assuj 1989.

Previso to section 16 added by Notification 6-L/81 as amended by Notification 11-L/83 published in Government Gazette dated 19th Katik 1981 and Government Gazette dated 15th

^{*}Section 16-A added by Notification 6-L/81 as amended by Notification 11-2/83 published in Government Gazette dated 19th Katik 1981 and Government Gazette dated 15th Bhadon

fine as remains unrealised from the person convicted may be realised from such proprietor in accordance with the provisions of the 'Code of Criminal Procedure 1969.]

217. (I) No Court inferior to that of a Magistrate of the 2nd class shall try any offence punishable under this Act or any rule made thereunder.

(2) All cases of infringement under the Act or any rule

made thereunder shall be tried summarily.

Oancellation and suspension of licences and disqualification for obtaining licence.

318. (I) Minister-in-charge of the Traffic Control Department may, in his discretion:—

(i) cancel or suspend any licence granted under this Act, and

(ii) declare any person disqualified for obtaining a licence under the Act either permanently or for such period as he thinks fit.

- (2) The Inspector-General of Police and the Traffic Superintendent may, suspend any licence granted under this Act for a period of one year and three months resepectively for reasons to be recorded in writing. An appeal from the order of the Traffic Superintendent shall lie to the Inspector General of Police whose decision shall be final.
- (3) Any Court by which any person is convicted of an offence against the provisions of this Act or any rule made thereunder or of any offence in connection with the driving of a Motor-vehicle shall, if such person holds a driving licence under the Act, cause particulars of the conviction to be endorsed thereon and may, in respect of such person and of his licence, if any, exercise the like powers as are conferred by sub-section (1) on the Minister-in-charge of the Traffic Control Department:

Provided that no order made by a Court under this subsection shall affect any person or licence for a period exceeding

one year from the date of such conviction.

(4) Any Court before which the holder of a licence under this Act is accused of any offence mentioned in sub-section (3) may suspend such licence until the termination of the proceedings before it.

(5) A copy of every order of cancellation, suspension or disqualification made under this section in respect of a licence or the holder of a licence shall be endorsed on the licence and a copy of every endorsement, in accordance with the

Code of Criminal Procedure (Act XXIII of 1989).

Section 17 amended by Notification 6-L/81, re-amended by Notification 11-L/83 and further amended by Notification 7L-/89 published in Government Gazette dated 19th Katik further amended by Notification 7L-/89 published in Government Gazette dated 21th Assuj 1981, Government Gazette dated 15t Bhadon 1983 and Government Gazette dated 21th Assuj 1983 respectively.

*Section 18 (as amended by 6-L/81) substituted by Notification 7-L/89 published in

Government Guzette dated 21st Assuj 1989.

provisions of this section, shall be sent to the authority by which such licence has been granted. .

(6) Every holder of licence shall when called upon to do so, produce his licence before any authority acting under this section.

(7) A person whose licence has been cancelled or suspended in accordance with the provisions of this section, shall during the period for which such order of cancellation has effect, or during the period of suspension, as the case may be, be disqualified for obtaining a licence.

(8) No person whose licence has been endorsed or who has been disqualified for obtaining a licence shall apply for, or obtain a licence without giving particulars of such endorse-

ment of disqualification.

19. Regulation 19 of 1966 is repealed hereby:—

Provided that any appointment, notification, order, rule, form or licence made or issued under the said Regulation, shall so far as it is not inconsistent with the provisions of this Act, continue in force and be deemed to have been issued under the provisions of this Act unless and until it is superseded by any appointment, notification, order, rule, form or licence made or issued under this Act.

20. (1) Any Police Officer [or any Traffic Officer] may Arrest of offenders without an order from a Magistrate and without warrant. without warrant, arrest any person committing in his view, a breach of any rule made under '[section II and 14], if the name and residence of such persons be unknown to such officer and cannot be ascertained by him then and there.

(2) When any such arrest has been made, the provisions of section 57 sub-section (2) and (3) and section 60 to 63 of the

Code of Criminal Procedure shall apply.

²(3) A Traffic Officer may require any person who in his view commits a breach of any provision of this Act or of any rule made thereunder, to execute a bond in the prescribed form with or without surety for the appearance of such person before a Court to answer a specific charge on a specific date and in default of such appearance to forfeit a sum not exceeding Rs. 200.

'(4) Such person if he declines or fails to execute the afore said bond, when required so to do, under sub-section (3) may be arrested by the said Traffic Officer and handed over to the

²(5) The provisions of the Code of Criminal Procedure

Words in section 20 (1) substituted by Notification 7-L//89 published in Government Gazette dated 21stAssuj 1989. 2 Sub-sections (3) (4) (5) of section 20 added by Notification No. 7-L/89 published in Geovenment Gazette dated 21st Assuj 1989.

relating to the forfeiture of bonds executed under the said Code shall apply to any bond executed under sub-section (3) referred to above. The forfeiture of the sum specified in the bond may also be enforced at the discretion of the Inspector General of Police by deducting from any security deposit under the Act or under any rule framed thereunder in respect of the Motor-vehicle with regard to which the bond was executed.

21. Nothing in this Act shall affect any liability whatever whether Civil or Criminal of the driver or owner of a Motor-vehcle aris-

ing under any other enactment or otherwise.

THE AFGHAN SUBJECTS REGISTRATION NOTIFICATION, 1976.

NOTIFICATION.

In view of the disturbed state of affairs on the North-West Frontier of India, His Highness the Maharaja Sahib

Bahadur has been pleased to order that:-

1. No Afghan subject shall enter into or leave the territory of the Jammu and Kashmir State without written permission previously obtained from the District Magistrate or the Sub-Divisional Magistrate concerned, '[or in the absence

of the latter from the Sub-Judge concerned.]

Provided that it shall be competent to the Assistant Inspectors of Customs at Kohala and Ramkot to issue permits for entering the State to such Afghan subjects as wish to enter into the State territory by the the Kohala and Ramkot routes respectively in pursuance of their trade or occupation as cartmen, tonga-drivers, and camel-men etc., [and to such Afghan subjects as may come as servants to visitors when the employer gives a certificate to the good character of the Afghan employee and takes upon himself the responsibility of his (the servants) keeping good behaviour during his stay in the State.]

2. Every Afghan subject already in the State territory shall get himself registered at the nearest Police Station within a period of two weeks from the issue of this Notification, and shall furnish such information to the officer-in-charge of the Police Station as may be required by him for this pur-

Words in brackets in section 1 and 3 inserted vide Police Ministers Notification No. 4/
1980 dated 13th March, 1924, published in Government Gazette dated 19th Chet 1980.

Words in brackets in section 1 added vide Notification No. 13/C. H. dated 15th September,
1919 published in Government Gazette dated 13th Assuj 1976.

pose and every Afghan subject who enters into the State shall within 24 hours of his arrival at his destination in the State get himself registered at the nearest Police Station in the same manner.

- 3. A certificate will be issued by the District Magistrate or the Sub-Divisional Magistrate concerned '[or in the absence of the latter by the Sub-Judge concerned,] to every Afghan subject on report made by the Officer-in-charge of the Police Station after registration, permitting such Afghan subject to reside within a local area which shall be mentioned and no Afghan subject shall change the place of residence so fixed without giving a notice of the intended change to the District Magistrate or the Sub-Divisional Magistrate concerned '[or in the absence of the latter, to the Sub-Judge concerned] and obtaining his permission to do so.
- 4. It is an offence to harbour or in any way assist Alguan subjects not in the possession of certificates under (3) above.
- 5. Every servant of the State and all Jagirdars, Zaildars, Lambardars and Chaukidars are bound to turnish information at the nearest Police Station of the wereabouts and other particulars of every Alghan subject who may be in the State in contravention of the directions contained hereinabove.
- herein above shall be produced before the Listrict Magistrate or the Sub-divisional Magistrate concerned '[or in the absence of the latter, before the Sub-Judge concerned] for being dealt with under law, and shall be liable to punishment with a fine which may extend to Ks. 50 or in default of payment of fine to simple imprisonment for a period not exceeding one month.

Explanation.—This order applies to every Afghan subject who is not domiciled in this State and is not one of its subject.

Nords in brackets in sections 3 and 6 inserted vide Police Minister's Notification No. 4/1)3), 1sted 13th March 1924 published in dovernment Gazette dated 19th Ohet 1980.

FORMS.

I. Registration.—The Officer-in-charge of a Police Station shall register Afghan subjects in the following form:—

| | ss. indentification | | |
|--|------------------------|---------------------|---------------|
| stay. | Special marks of in | Thumb impression. | REMARKS. |
| THE PROPERTY OF THE PARTY OF TH | stay. | Special marks of in | Special marke |

II. CERTIFICATE.—This is to certify that son of is permitted to reside in at until further orders. He shall not change his place of resident without obtaining the permission of the District/Sub-Divisional Magistrate to do so. Failure to obtain such permission will render him liable to a fine not exceeding Rs. 50 or in default to simple imprisonment not exceeding one month.

Place

Date

Signature.

III. PERMIT.—(i) This is to certify that son of is permitted to enter into the Kashmir territory.

He shall get himself registered within 24 hours of his arrival at the destination at the nearest Police Station and shall furnish such information to the Officer-in-charge of the Police Station as may be required by him for this purpose.

Place

Date.

Signature.

(ii) This is to certify that son of is permitted to leave the Kashmir territory.

Place

Date

Signature.

THE EXTRADITION RULES, 1976. No. IV of 1976.

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 Officer-in-charge to order surrender of accused persons.

8. State Police to arrest a person at the request of the Police or District Magistrate in British India.

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10. Joint Police to escort.

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Rule.

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14: Places of surrender of accused persons.

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19. Places of surrender with respect

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22. Deserters from Army.

23. Incidental expenses.
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26. Extradition between Kashmir and Mandi State.

26. Detention period to be 3 months between Mandi and Kashmir State.

Appendix.

EXTRADITION RULES NO. IV OF 1976.

As amended up-to-date.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's No. 10342 dated 16th October 1919).

Extradition may be classified as below:—

(a) Surrender of an accused person by the Jammu and Kashmir State, to British India and vice versa.

(b) Surrender of an accused person by the Jammu and Kashmir State, on the one side, and the Indian Native States, i.e., Chamba, Patiala, Indore, Rampur, Kapurthala, Simore, Bahawalpor, Kotah, Faridkot, [Hyderabad,] [Mandi] and Mewar, on the other.

(c) Surrender of an accused person by the Jammu and Kashmir State, on the one side, and the Poonch Illaqa or Jagir (Bhadarwah, or Chenani) on the other side and vice versa.

1. Whenever a Police officer from outside the Jammu and Kashmir State may, with the assistance of the State Police, arrest within the State territory a person charged with a cognizable and extraditable offence, committed outside the State territory, it shall be his duty to hand over the person so arrested and property, if any, seized by him to the State Police of the circle in which arrest was made or property seized; and it shall be incumbent upon the latter:—

(i) to receive the person and the property if any,

- (ii) to grant acknowledgment to the person making the delivery, and
- (iii) to place the accused person and the property so received before the nearest Magistrate within 24 hours or as soon after as possible, with due regard to the distance to be traversed.
- 2. The Magistrate shall thereupon proceed to consider and determine the question of bail in conformity with the provisions of the Code of Criminal Procedure.
- 3. An application for extradition shall, in every case, be made within two months from the date of arrest. If the application be not so made, the accused person shall, if in custody, be set at liberty, if on bail, his bail bond shall be cancelled, unless he has already been restored to liberty in consequence of the intimation that evidence is not forthcoming.
- 4. If in any case of arrest or seizure of property, made over under the foregoing rule I, the Police making the arrest or seizure, consider it necessary to have evidence recorded of such arrest or seizure or of other relavant matters, it shall

^{*}Added by Notification 27-L/1989 published in Government Gazette dated 19th Bhadon 1989.

[&]quot;Mandi" added by Notification No. 30-L/1989 published in Government Gazette dated 14th Aussi 1989.

With effect from 5th Sawan, 1997, appeals etc. from Poonch shall be entertained and disposed of by the State High Court of Judicature. Proclamation of His Highness the Maharaja Bahadur published in Government Gazette dated 5th Sawan 1997 (Extraordinary).

Baadarwah amalgmated to the administration of the State. His Highness' Order, October 13, 1929 published in Government Gazette dated 4th Katik 1986.

With effect from 1st of Katik 1995, the Civil District and Sessions Divisions of Chenani Illaga subordinated to the appellate and revisional jurisdiction of the State High Court of Judicature and Subjected to its General Superintendence in matters Civil and Criminal. Prime Minister's Notification dated 3rd February, 1939 published in Government Gazette dated 19th Phagan 1995.

request the Magistrate of the locality to record such evidence and to supply copies thereof, to the Police at whose instance

the evidence was recorded.

ed by the 'Poonch Illaqa or the 'Bhadarwah or 'Chenani Jagir, the Police making the arrest shall, within the aforesaid two months, apply for extradition in the manner determined by the administration to which they are subject, through the Resident in Kashmir, forwarding with the application a summary of the prima facie evidence in the prescribed form and attested copies of the depositions of the prosecution witnesses.

6. The Residency office may send the application and the other papers, mentioned in the foregoing paragraph, '[to the Political Minister Jammu and Kashmir Government who shall forward them to the Officer-in-charge of the Extradition

work for disposal.]

- 7. On receipt of the application and evidence, through proper channel, the Officer-in-charge of Extradition work shall examine the prima facie evidence and shall, if necessary, call for further evidence, examine in his discretion the person accused and then decide whether the evidence justifies his surrender. If the prima facie evidence be found sufficient and satisfactory, the Officer-in-charge of Extradition work shall, by a warrant, authorise the State Police to secure and hand over the accused person to the authority demanding extradition in the manner arranged and to be referred to hereafter.
- 8. Whenever the State Police is asked by the Police or District Magistrate in British India to arrest a person, residing in Jammu and Kashmir State, on a charge of an extraditable offence, whether cognizable or non-cognizable, the State Police shall proceed to make the arrest and the person arrested shall be dealt with in the manner set out in the foregoing rules.
- 9. In a case where it is represented that the presence at the place of investigation of the person arrested or the property seized or of both is necessary before formal surrender, to complete the investigation, the accused person under arrest or the property seized or both may, in the discretion of the Officer-incharge of Extradition work, be allowed to be taken to the place of investigation, on condition of return being made on completion of the investigation.

See footnote 3 on P. 324-

¹⁸ee fout ote 4 on P. 324.

^{&#}x27;See footnote 5 on P. 824,

Substituted by Notification 5.1/8: published in Government Gazette dated 27th Baisakh 1984.

10. Whenever in pursuance of rule 9 it becomes necessary to forward the accused person, who is in custody, to the place of investigation he shall be taken by a joint Police escort of the State and the Administration, at whose instance the arrest was made.

11. If the person required be on bail he shall be directed by the Officer-in-charge of Extradition work to present himself before the District Magistrate of the District concerned.

- 12. When any property has to be sent to any place in British India, in pursuance of rule 9, it shall be so sent either under a registered parcel addressed to the District Magistrate of the place or in such other manner as, having regard to the nature of property and the circumstances of the case, may seem to the Officer-in-charge of Extradition work to be the best suited.
- Searches between Hazar property in the district of Hazara, they and Kashmir State. must, before making search, inform the District Magistrate or such other authority as he may nominate and carry on the search with the help of the British Indian Police.

Similarly the Hazara District Police, when they cause search to be made for stolen property within the State territory, must, before making such search, send a similar intimation to the Sub-Divisional Magistrate Muzaffarabad and carry out the search with the help of the State Police.

14. An accused person to be surrendered by the Jammu and Kashmir State shall be made over to the British Indian Police at one of the

following centres:—

Sialkote, Murree, Ghari Habib Ullah, Jhelum or Pathan-kote.

any person accused of having committed a cognizable and extraditable offence within the State.

Extradition from British a cognizable and extraditable offence within the State territory and, with the help of the Police in British India, may arrest such person and hand him over to the British Indian Police, taking a receipt therefor from the receiving officer. Immediate intimation of the arrest and handing over shall be given by the State Police to the Officer-in-charge of Extradition work.

16. The officer making the arrest shall, then, forthwith, prepare prima facie evidence and submit to the Officer-in-charge of Extradition work.

17. The Officer-in-charge of Extradition work shall scrutinize the prima facie evidence, and, in case, he finds the evi-

dence insufficient, shall with intimation of this fact return the case to the Superintendent of Police; otherwise he shall take necessary steps to secure the surrender of the accused.

18. In Extradition cases under this heading, it shall not

Extadition between Jammu and Kashmir State on the one hand and the Poonch Illaqa or Jagir of Bhadarwah or Chenani on the other and vice versa.

be necessary to send or receive prima facie evidence; but it will be justifiable to execute process (warrant or summons) issued by the Court of one Adiministration in the territory of the Administration where the the accused is said to be.

19. The surrender of an accused person to or by the the Poonch Illaqa, shall be made at Kotli in the Jammu Province and at Uri in the Kashmir Province. The surrender of an accused person to or by the Jagir authorities shall be made at convenient places.

20. (I) Extradition of offenders at the instance of SirExtradition between more, Kapurthala, Bahawalpur, Kotah,
the Jammu and Kashmir Faridkote, Chamba, Patiala, Indore, Ramstate and other States.

pur or Mewar State shall be made according to the foregoing rules through the Residency office.

(2) Hyderabad State subjects whose prosecution is required by the Jammu and Kashmir State shall be extradited in accordance with the Hyderabad Extradition Act II of 1316-F.

(3) Requisition for Extradition of the subjects of the Jammu and Kashmir State to Hyderabad shall be dealt with in accordance with the provisions of the Indian Extradition Act No. XV of 1903.

21. Members of tribes, which have been declared to be criminal tribes under the laws relating to them, shall be produced before a Magistrate and under his orders, without any place from where they had absconded.

22. A deserter from the British Indian Army or the Imperial Service Troops shall be arrested and surrendered to the Administration at whose instance he was so arrested.

23. When a person is extradited from one administration at the request of another costs of transporting of the person so extradited, for the tration, making the surrender, shall be borne by that Administration, while the rest shall be paid by the Administration at whose instance the surrender was made.

See footnote 3, 4, 5, on P. 324.
Sub-rules (2) and (3) of rule 20 added by Notification 27-L 1989 published in Government Gazette dated 24th Bhadon 1989.

24. The offences enumerated in the list attached hereto have been declared extraditable under Act No. XV of 1903.

25. As between Kashmir and Mandi States, it shall be lawful for a Police officer of one State to pursue the accused in the territories, of the other State, but he shall not arrest him without the assistance of the local Police. In the absence of actual assistance, previous consent or knowledge of the Local Police will be sufficient.

¹26. The detention period of the persons to be extradited

shall be 3 months between Mandi and Kashmir States.

Note.—For agreement regarding the reciprocal arrest and Surrender of Criminals and Stolen property between Gwalior and Jammu and Kashmir Governments see Notification No. 1-1./(1995) published in Government Gazette dated 16th Baisakh 1995. (Editor).

APPENDIX.

(The sections referred to are the sections to the Indian Penal Code.)

²Riot and offences connected therewith (sections 147 to 158). Fraud upon creditors (section 206).

Resistance to arrest (section 224).

Offences relating to coin and stamps (sections 230 to 263-A). Culpable homicide (sections 299 to 304).

Attempt to murder (section 397).

Thagi (sections 310, 311).

Causing miscarriage and abandonment of child (sections 312 to 317).

Causing hurt (sections 323 to 333).

Wrongful confinement (sections 347, 348).

Kidnapping and slavery (sections 360 to 373).

Rape and unnatural offences (sections 375 to 377).

Theft, extortion, robbery, etc., (sections 378 to 414).

Cheating (sections 415 to 420).

Fraudulant deeds, etc., (sections 421 to 424).

Mischief (sections 425 to 440).

Lurking, house trespass (sections 443 to 446).

Forgery, using forged documents (sections 463 to 477-A). Enticing or taking away or detaining with criminal intent a married woman (section 498).

'[Desertion from any Unit of Indian State Forces declar-

Rules 25 and 26 added by Notification 30-L/1989 published in Government Gazette dated 14th Assuj 1989.

Vide Notification No. 14-L of 1989, published in Government Gazette dated 24th Har 1989. This Notification, however, applies only as between Jammu and Kashmir State and Poonch. Vide Notification No. 4-L/1991 published in Government Gazette dated 19th Assuj 1991.

*vide Government of India Notification No. 361-I, dated 29th May 1929.

*Substituted vide Notification No. 13-L/1991 published in Government Gazette dated 1st

Chet 1991.

ed by the Governor General in Council, by notification in the Gazette of India, to be a Unit desertion from which is an extradition offence].

Piracy by Law of nations.

Sinking or destroying a vessal at sea or attempting or conspiring to do so.

Assault on board a ship on the high sea with intent to

destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Any offence against any section of the Indian Penal Code or against any other Law which may, from time to time, be specified by the Governor General in Council by notification in the Gazette of India either generally for all

States or specially for any one or more States.

"["Offences connected with the traffic in dangerous drugs, vis. under Indian Opium Act 1878, the Dangerous Drugs Act 1930, and the Excise and Abkari Acts in so far as they relate to Indian Hemp and traffic in opium and intoxicating drugs as defined in section 3, clauses 8 and 9 of the Jammu and Kashmir Excise Act 1958."

This arrangement takes effect from 1st July 1935.]

²[As between Kashmir and Mandi States, offence under S. 498 of the Ranbir Penal Code shall be extraditable.]

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THE INDIAN EXTRADITION ACT, 1903.

(XV OF 1903.)

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[Rep. by Act X of 1914.]

THE INDIAN EXTRADITION ACT, 1903. Act No. XV of 19031.

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[4th November 1903].

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE EXTRADITION AND RENDITION OF CRIMINALS.

Whereas it is expedient to provide for the more convenient administratin in British India of the Extradition Act, 1870 and 1873, of the Fugitive Offen-33 & 34 Vict., c., 52; der Act, 1881; 36 & 37

and whereas it is also expedient to amend the extradition of criminals Vict., c. 60; in cases to which the Extradition Acts, 1870 and 1873, do not apply; 44 & 45 Vict., c. 69.

It is hereby enacted as follows :-

CHAPTER I.

PRELIMINARY.

Short title, extent 1. (1) This Act may be called the Indian Extradition and commencement. Act, 1903.

(2) It extends to the whole of British India (including Bristish Baluchistan, the Santlal Parganas and the Pargana of Spiti); and

(3) It shall come into ferce on such day as the Governor General in Council, by notification in the Gazette of India, may direct2.

2. In this Act, unless there is anything repugnant in the subject or Definition. context,-

1 For Statement of Objects and Reasons, see Gazette of India, 1901, Pt. V, p. 24; for Report of Select Committee, see ibid, 1903, Pt. V, p 469; for Proceedings in Council, see] ibid, Pt. VI. pp. 151, 163 and 177.

The Act has been declared to come into force from the 1st June 1904, see Gazette of India, 1904, Pt. 1, p. 364.

The Act has been declared in force the Angul District Ly s. 3 of the Angul Laws Regulation, 1913 (III of 1913).

- (a) "European British subject" means a European British subject as defined by the Code of Criminal Procedure for the time being in force:
- (b) "extradition offence" means any such offence as is described in the first schedule:
- (c) "Foreign State" means a State to which for the time being, the Extradition Acts 1870 and 1873, apply:
- (d) "High Court" means the High Court as defined by the Code of Criminal Procedure for the time being in force:
- (e) "offence" includes any act wheresoever committed which would, if committed in British India, constitute an offence: and
- (f) "rules" include prescribed forms.

33 & 34 Vict., c. 52; 36 & 37 Vict., c. 60

1 CHAPTER 11.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF FOREIGN STATES.

- S. (1) Where a requisition is made to the Government of India or to any Local Government by the Government of any Foreign State Requisition for for the surrender of a fugitive criminal of that State, who surrender.

 Surrender.

 is in, or who is suspected of being in British India, the Government of India or the Local Government, as the case may be, may, if it thinks fit, issue an order to any Magistrate who would have had jurisdiction, to inquire into the crime if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case.
- (2) The Magistrate so directed shall issue a summons or warrant for the arrest of the fugitive criminal according as the case appears summons or warto be one in which a summons or warrant would ordinarily rant for arrest. issue.
- (3) When such criminal appears or is brought before the Magistrate, the
 Magistrate shall inquire into the case in the same manner
 Inquiry by and have the same jurisdiction and powers, as nearly as
 Magistrate.

 may be, as if the case were one triable by the Court of
 Session or High Court, and shall take such evidence as
 may be produced in support of the requisition and on behalf of the fugitive
 criminal, including any evidence to show that the crime of which such
 criminal is accused or alleged to have been convicted is an offence of a politieal character or is not an extradition crime.

(4) If the Magistrate is of opinion that a prima facie case is made out in support of the requisition, he may commit the fugitive criminal to prison to await the orders of the Government of India or the Local Government, as the

(5) If the Magistrate is of opinion that a prima facie case is not made out in support of the requisition, or if the case is one which is ballable under the provisions of the Code of Criminal Procedure for the time being in force, the Magistrate may release the fugitive criminal on bail.

Ohapter II has been declared to have effect in British India as if it were part of the Extradition Act, 1870 (33 and 34 Vict., c. 52): ses Order in Council, dated the 7th March 1904, Gazette of India, 1904, Pt. 1. p. 363.

- (6) The Magistrate shall report the result of his inquiry to the Government of inquiry to the Government, as the case may ment of inquiry to the Local Government, as the case may be, and shall lorward, together with such report, any, report.

 Written statement which, the lugitive criminal may desire to submit for the consideration of the Government.
- (7) If the Jovernment of India or the Local Government, as the case may be, is of opinion that such report or written statement court if Government raises an important question of law it may make an order referring such question of law to such high Court as may be named in the order, and the fugitive criminal shall not be surrendered until such question has been decided.

(8) If, upon receipt of such report and statement or upon the decision of any such question, the Gavernment of India or the Local Warrant for sur-Government, as case may be, is of opinion that the fugitive render.

Criminal ought to be surrendered, it may issue a warrant for the custody and removal or such criminal and for his delivery at a place and to a person to be named in the warrant.

(9) It shall be lawful for any person to whom a warrant is directed in pursuance of sub-section (5), to receive, hold in custody and convey the person mentioned in the warrant to the place named in the warrant, and, it such person escapes out of any for surrender.

Warrant, he may be re-taken as a person accused of an offence against the law of prices indicate may be re-taken upon an escape.

(10) it such a warrant as is prescribed by sub-section (5) is not issued and executed in the case of any jugitive criminal, who has been committed to prison under sub-section (1), within two months after such committal, the High Court may, upon application made to it on behalf of such jugitive months.

The committed to prison under sub-section (1), within two months after such committal, the High Court may, upon application made to it on behalf of such jugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Government of India or the Local Government, as the case may be, order such criminal to be discharged, unless sufficient cause is shown to the contrary.

- 4. (1) Where it appears to any magistrate of the first class or any Magistrate trate specially empowered by the Local Government in this benalt that a person within the local limits of his jurisdiction is a fugitive criminal of a Foreign State, he may, if he thinks ht, issue a warrant for the arrest of such person, on such information of complaint and on such evidence as would, in has been convicted had been committed within the local limits of his jurisdiction.
- (2) the Magistrate shall forthwith report the issue of a warrant under to be reported forth-with.
- (i) A person arrested on a warrant issued under this section shall not be detained more than two months unless within that period not to be detained the Magistrate receives an order made with reference to unless order 1e. such person under section 3, sub-section (1).
- (4) an the case of a person arrested or detained under this section the Bail.

 Provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in same manner as if

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such person were accused of committing in British India the crime of which he is accused or has been convicted.

- 5. (1) If the Government of India or any Local Government is of opinion that the crime of which any fugitive criminal of Foreign state is accused or alleged to have been convicted is of a political character, it may, if it think fit, refuse to issue any order under section 3 when crime of political
- (2) The Government of India or the Local Government may also at any time stay any proceedings taken under this Chapter and direct any warrant issued under this Chapter to be cancelled any person in custody at any time.

 (2) The Government of India or the Local Government may also at any time stay any proceedings taken under this Chapter and direct any warrant issued under this Chapter to be cancelled any person in custody at any time.
- in section 3 of the Extradition Act. 1870, shall be read as referring respectively to the Magistrate directed to inquire into a case under section 3 of this Act, and to the Government of Extradition Act, be.

33 & 34 Vict. c. 52.

CHAPTER III.

SUBRENDER OF FUGITIVE CRIMINALS IN CASE OF STATES OTHER THAN FOREIGN STATES.

Tesus of warrant British subject, in the territories of any State not being a Foreign State and such person escapes into or is in British India and the Political Agent in or for such State issues a warrant, addressed to the District Magistrate of any district in which such person is believed to be '[or if sush person is believed to be in any Presidency-town to the Chief Presidency Magistrate of such town], for his arrest and delivery at a place and to a person or authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant and may give directions accordingly.

(2) A warrant issued as mentioned in sub-section (1) shall be executed in the manner provided by the law for the time being in

force with reference to the execution of warrants, and the accused person, when arrested, shall '[be produced, before the District Magistrate or Chief Presidency Magistrate, as the case may be, who shall record any statement made by him; such accused person shall then], unless released in accordance with the provisions of this

person shall then], unless released in accordance with the provisions of this Act, be forwarded to the place and delivered to the person or authority indicated in the warrant.

(3) The provisions of the Code of Criminal Procedure for the time being in force in relation to proclamation and attachment in case of persons absconding shall, with any necessary modifications, apply where any warrant has been received by a District Magistrate [or Chief Presidency Magistrate] ander this section as if the warrant had been issued by

himself.

These words were inserted by section 2 of the Indian Extraction (Amendment)
Act, 1913 (1 of 1913).

8. (1) Where a Political Agent has directed by endorsement on any such warrant that the person for whose arrest it is issued may be released on executing a Lond with sufficient sureties for his Release on givattendance before a person or authority indicated in this ing security. behalf in the warrant at a specified time and place, the Magistrate to whom the warrant is addressed shall on such security being given release such person from custody.

(2) When security is taken under this section, the Magistrate shall certify the lact to the Political Agent who issued the warrant,

Magistrate to reand shall retain the bond. tain bond.

(3) If the person bound by any such bond does not appear at the time and place specified, the Magistrate may, on being satisfied Re-arrest in as to his delauit, issue a warrant directing that he be recase of default. arrested and handed over to any person authorised by the Political Agent to take him into custody.

(4) In the case of any bond executed under this section, the Magistrate may exercise the powers conferred by the Code of Criminal Procedure for the time being in force in relation to taking a Deposit in lieu of bond, and fordeposit in lieu of execution of a bond and with respect to the

feiture of Londs. foriesture of bonds and the discharge of sureties.

1[8-A. Notwithstanding anything contained in section 7, sub-section (2) or in section 8, when an accused person arrested in accordance Power to report with the provisions of section 7 is produced before the Discase for orders of trict Magistrate or Chief Presidency Magistrate, as the case Local Governmet. may be, and statement (if any) of such accused person has been recorded, such Magistrate may, if he thinks ht, before proceeding further report the case to the Local Government and pending the receif ts of orders on such report, may detain such accused person in custody or release him on his executing a bond with sufficient sureties for his attendance when required.

9. When a requisition is made to the Government of India or to any Local Government by or on behalf of any State not being a Requisitions Foreign State, for the surrender of any person accused of by States not being having committed an offence in the territories of such State, foreign States. such requisition shall except in so for as relates to the taking of evidence to show that the oftence is of a political characteror is not an extradition crime, be dealt with in accordance with the procedure prescribed by section 3 for requisitions made by the Government of any Foreign State as if it were a requisition nade by any such Government under that section:

Provided that, if there is a Political Agent in cr for any such State, the

requisition shall be made through such Political Agent.

10. (1) If it appears to any Magistrate of the first class or any Magistrate empowered by the Local Government in his behalf that Power to Mag sa person within the local limits of his jurisdiction is accused trates to issue waror suspected of having committed an offence in any State lants of allet in not being a Foreign State and that such person may lawfulcestain cases. ly be surrended to such State, or that a warrant may be issued for his arrest under section 7, the Magistrate may, if he thinks fit, issues a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the offence had been committed within the local limits of his jurisdiction.

Section 8-A was inserted by section 3 of the Indian Extradition (Anerdment) Act, 1918 (1 of 1913).

- (2) The Magistrate shall forthwith report the issue of a warrant under Issue of warrant this section, if the offence appears or is alleged to have been to be reported committed in the territories of a State for which there is a to the Local Government.

 Political Agent, to such Political Agent and in other cases
- (3) A person arrested on a warrant issued under this section shall not, without the special sanction of the Local Government, be detained the detention of person arrested.

 Limit of time of ed more than two months, unless within such period the Magistrate receives an order made with reference to such person in accordance with the procedure prescribed by section 9, or a warrant for the arrest of such person under section 7.

(4) In the case of a person arrested or detained under this section, the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in British India the offence with which he is charged.

11. (1) A person accused of an offence committed in British India, not being the offence for which his surrender is asked, or underson accused of, or undergoing sentence are not be surrendered in compliance with a warrant issued by a Political Agent under section 7 or a requisition made by or on behalf of any State not being a Foregin State under section 9, except on the condition that such person be resurrendered to the Government of India or the Local Government, as the case

surrendered to the Government of India or the Local Government, as the case may be, on the termination of his trial for the offence for which his surrender has been asked:

Provided that no such condition shall be deemed to prevent or postpone the execution of a sentence of death lawfully passed.

Suspension of sentence on sursentence on surrender.

On the surrender of a person undergoing sentence under a conviction in British India his sentence shall be deemed to be suspended untill the date of his re-surrender, when it shall revive and have effect for the portion thereof which was unexpired at the time of his surrender.

12. The provisions of this Chapter with reference to accused persons shall, with any necessary modifications, apply to the case of a Application of person who, having been convicted of an offence in the Chapter to convict territories of any State, not being a Foreign State, has escapted persons.

13. Every person who is accused or convited of abetting or attempting to commit any offence shall be deemed, for the purposes of this Chapter, to be accused or convicted of having committed such offence, and shall be liable to be arrested and surrenden-

14. It shall be lawful for any person to whom a warrant is directed in pursuance of the provisions of this Chapter, to receive, hold in custody and convey the person mentioned in the warrant, to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of British India may be re-taken upon an escape.

15. The Government of India or Local Government may, by order, stay any proceedings taken under this Chapter, and may direct any warrant issued under this Chapter to be cancelled, and ment to stay protections and distance the person for whose arrest such warrant has been issued to charge person in be discharged.

- 16. The provisions of this Chapter shall apply to an offence or to an extradition offence, as the case may be, committed before the passing of this Act, and to an offence in respect of which a committed before its commencement.
- 17. (1) In any proceedings under this Chapter, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof, and official certificates of facts and judicial documents stating officials and official certificates of facts and judicial documents stating facts, may, if duly authenticated, be received as evidence.
- (2) Warrants, depositions or statements on oath with purport to have been issued, received or taken by any Court of Justice outside British India, or copies thereof, and certificates the same.

 of, or judicial documents stating the fact of, conviction before any such Court, shall be deemed duly authenticated:—

(a) if the warrant purports to be signed by a Judge, Magistrate or officer of the State where the same was issued or acting in or for such State:

(b) it the depositions or statements or copies thereof purport to be certified, under the hand of a Judge. Magistrate or officer of the State where the same where taken, or acting in or for such State, to be the original depositions or statements or to be true copies thereof, as the case may require:

(c) if the certificate of, or judicial document stating the fact of a conviction purport to be certified by a Judge, Magistrate or officer of the State

where the conviction took place or acting in or for such State:

(d) if the warrants, depositions, statements, copies, certificates and judicial documents as the case may be, are authenticated by the oath of some witness or by the official seal or minister of the State where the same were respectively issued, taken or given.

(3) For the purposes of this section "warrant" includes any judicial document authorising the arrest of any person accused

Definition of or convicted of an offence.

Chapter not to derogate from the provisions of any provided by any such tready shall be followed in any case to which it applies and the provision of this Act shall be modified accordingly.

CHAPTER IV.

RENDITION OF FUGITIVE OFFENDERS IN HIS MAJESTY'S DOMINIONS.

- 19. For the purpose of applying and carrying into effect in British India
 the provision of the Fugitive Offenders Act, 1981, the following provisions are hereby made:—
 O. 69. Act, 1981.
 - (a) the powers conferred on "Governors" of British possessions may be exercised by any Local Government:
 - An order in Council dated 7th March 1904, has declared; that this Chapter shall be recognised and given effect to throughout His Majesty's Dominions and on the high seas as if it were a part of the Fugitive Offenders Act 1981 (44 and 45 Vict., c. 69).

(b) the powers conferred on a "Superior Court" may be exercised by any Judge of a High Court:

(c) the powers conferred on a "Magistrate" may be exercised by any Magistrate of the first class or by any Magistrate empowered by the 'Local Government in that behalf: and

(d) the offences committed in British India to which the Act applies, are piracy, treason, and any offence purishable under the Indian Penal Code with XIV of rigorous imprisonment for a term of twelve months or more or with any greater punishment.

CHAPTER V.

OFFENCES COMMITTED AT SEA.

Requisition for the surrender of a person accused of an offence surrender in case of committed on board any Vessel on the high seas which offence committed at comes into any port of British India, the Local Government and any Magistrate having jurisdiction in such port and authorised by the Local Government in this behalf may exercise the powers conferred by this Act.

CHAPTER VI.

EXECUTION OF COMMISSIONS ISSUED BY CRIMINAL COURTS OUTSIDE BRITISH INDIA.

Execution of commis. criminal matter pending in any Court or tribunal in any sions issued by Criminal country or place outside British India in like manner as Courts outside British it may be obtained in any civil matter under the provisions of the Code of Civil Procedure for the time being in force with respect to commissions, and the provisions of that Code relating thereto shall be construed as if the term "suit" included a criminal proceeding:

Provided that this section shall not apply when the evidence is required for a Court or tribunal in any State outside India other than a British Court and

the offence is of a political character.

CHAPTER VII.

SUPPLEMENTAL.

22. (1) The Governor General in council may make rules to carry out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the removal of prisoners accused or in custody under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as are entitled to receive them;

(b) the seizure and disposition of any property which is the subject of, or

required for proof of, any alleged offence to which this Act applies;

^{1.} For rules see Gazette of India, 1904, Pt. 1 P. 364; also Gen. S. B. and O.

(c) the pursuit and arrest in British India, by officers of the Government or other persons authorised in this behalf, of persons accused of offences committed elsewhere; and

(d) the procedure and practice to be observed in extradition proceedings.
(3) Rules made under this section shall be published in the Gazette of India

and shall thereupon have effect as if enacted by this Act.

23. Notwithstanding anything in the Code of Criminal Procedure, 1898, any

Detention of persons arrested under section 54, clause secenthly, Act V, 1898. person arrested without an order from a Magistrate and without a warrant, in pursuance of the provisions of section 54, clause SEVENTHLY, of the said Code, may, under the orders of a Magistrate within the local limits of whose jurisdiction such arrest was made, be detained in the same manner and subject to the same restrictions as a person arrested on a warrant

issued by such Magistrate under section 10.

24. [Repeals.] Rep. by the Repealing and Amendin.g Act, 1914 (X of 1914).

THE FIRST SCHEDULE

EXTRADITION OFFENCES.

[See section 2, clause (b), and Chapter III (Surrender of Fugitive Crimina's in case of States other than Foreign States).]

[the sections referred to are the sections of the Indian Penal Code.]

Frauds upon creditors (section 206).

Resistance to arrest (section 224).

Offences relating to coin and stamps (section 230 to 263-A).

Culpable homicide (section 299 to 304).

Attempt to murder (section 307).

Thagi (section 310, 311).

Causing miscarriage, and abandonment of child (sections 312 to 317).

Causing hurt (sections 323 to 333).

Wrongful continement (sections 347, 348).

Kidnapping and slavery (sections 360 to 373).

Rape and unnatural offences (sections 375 to 377). Theft, extortion, robbery, etc. (sections 378 to 414).

Cheating (sections 415 to 420).

Fraudulent deeds, etc. (sections 421 to 424).

Mischief (sections 425 to 440).

Lurking house-trespass (sections 443, 1[444]).

Forgery, using forged documents, etc. (sections 463 to 477-A).

"Desertion from any unit of ²[Indian States Forces] declared by the Governor General in Council, by notification in the Gazatte of India to be a unit desertion from which is an extradition offence."

Piracy by law of nations.

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assault on board a ship on the high seas with intent to destroy life or to do griveous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship

on the high seas against the authority of the master.

Any offence against any section of the indian Penal Code or against any other law which may, from time to time, be specified by the Governor General in Council by notification in the Gazette of India either generally for all States or specially for any one or more States.

the Repealing and Amending Act, 1914 (X of 1914).

*Substituted by Act VIII of 1930.

*Substituted by Act 16 of 1922.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

Rep. by the Repealing and Amending Act 1914 (X of 1914).]

THE CRIMINAL TRIBES ACT 1976. Act No. 11 of 1976.

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THE SCHEDULE.

THE CRIMINAL TRIBES ACT, 1976. Act No. II of 1976.

(Sunctioned by His Highness the Maharaja Sahib Bahadur vide Home Minister's letter No. 2570, dated 19th November 1918.)

An Act to amend the law relating to the registration, surveillance and control of Criminal Tribes.

Whereas it is expedient to amend the law relating to the registration, surveillance and control of criminal tribes; it is hereby enacted as follows:—

PRELIMINARY.

- 1. (1) This Act may be called the Criminal Tribes Act of Samvat 1976. and
- (2) It extends to the whole of the Jammu and Kashmir State.
 - 2. In this Act, un'ess there is anything repugnant in the subject or context,
 - (r) "criminal tribe" means a tribe, gang or class of persons declared to be a crimina tribe by a notification under section 3;

- (2) "prescribed" means prescribed by rules under this Act; and
- (3) "tribe," "gang" or "class" includes any part or members of a tribe, gang or class.

NOTIFICATION OF CRIMINAL TRIBES.

Power to declare any tribe, gang or class of persons is addicted to the systematic commission of non-bailable offences it may, by notification in the Jammu and Kashmir Government Gazette, declare that such tribe, gang or class is a criminal tribe for the purpose of this Act.

REGISTRATION OF MEMBERS OF CRIMINAL TRIBES.

4. The '[Government] may direct the District MagisRegistration of members trate to make or to cause to be made a reof Oriminal tribes. gister of the members of any criminal tribe
or of any part thereof within his district.

Note. - For forms and contents of the register prescribed in the section see Rules under section 20, published in Government Gazette, dated 29th Har 1977.

Procedure is making such direction, the District Magistrate shall publish a notice in the prescribed manner at the place where the register is to be made and at such other places as he may think fit, calling upon all the members of such criminal tribe, or of such part thereof as is directed to be registered,

(a) to appear at a time and place therein specified be-

fore a person appointed by him in this behalf; and

(b) to give to that person such information as may be necessary to enable him to make the register; and

(c) to allow their finger-impressions to be recorded.

Provided that the District Magistrate may exempt any individual member of such criminal tribe or part thereof from registration.

6. The register when made, shall be placed in the keeping of the Superintendent of Police, who shall, from time to time report to the District Magistrate any alterations which ought in his opinion to be made therein, either by way of addition or erasure.

Norg. See also Notification No. 11-L/84, published in Government Gazette dated

9th Magher 1984.

Words "Government" substituted vide Act X of 1996, published in the Government Gazette, dated 15th Bhadon 1996.

7. (1) After the register has been placed in the keeping of the Superintendent of Police, no person shall be added to the register and no Alteration in register registration shall be cancelled, except by or by the order in writing of the District Magistarate.

(2) Before the name of any person is added to the register under this section, the District Magistate shall give notice in

the prescribed manner to the person concerned,

(a) to appear before him or a person appointed by him

in this behalf at a time and place therein specified;

(b) to give him or such person such information as may be necessary to enable him to make the entry; and

(c) to allow his finger-impressions to be recorded.

8. Any person deeming himself aggrieved by any entry made, or proposed to be made in such register either when the register is first Complaints of entries in made or subsequently, may complain to register. the District Magistrate against such entry, and the Magistrate shall retain such person's name on the register or enter it therein, or erase it therefrom, as he may see fit.

9. The District Magistrate may at any time order the r to take finger- finger-impressions of a registered member Power to take finger-

of a criminal tribe to be taken. impressions at any time.

10. The '[Government] may, by notification in the Jammu and Kashmir Government Gazette, direct Member of criminal in respect of any criminal tribe that every tribes to report themregistered member thereof shall, in the selves or notify residence. prescribed manner,

(a) report himself at fixed intervals; or

(b) notify his place of residence and any change or intended change of residence and any absence or intended absence from his residence.

RESTRICTION OF MOVEMENTS OF CRIMINAL TRIBES.

- 11. (1) If the ²[Government or any officer appointed by the Government in this behalf] considers Procedure when deemed that it is expedient that any criminal tribe to restrict movements of, or settle, should be oriminal tribes.
 - (a) restricted in its movements to any specified area, or

(b) settled in any place of residence. he may report the case for the order of the '[Government].

1See footnote under section 3. "Words substituted for "Minster-in-charge of the Police Department" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996,

(2) Every such report shall state—

(i) the nature and the circumstances of the offences in which the members of the criminal tribe are believed to have

been concerned, and the reasons for such belief;

(ii) whether such criminal tribe follows any lawful occupation, and whether such occupation is in the opinion of the Government or any officer appointed by Government in this behalf] the real occupation of such criminal tribe, or a pretence for the purpose of facilitating the commission of crimes and the grounds on which such opinion is based;

(iii) the area to which it is proposed to restrict the movements of such criminal tribe or the place of residence in which

it is proposed to settle it; and

(iv) the manner in which it is proposed that such criminal tribe shall earn its living within the restricted area or in the settlement, and the arrangements which are proposed to be made therefor.

Notification restricting movements of or settling report the ²[Government] is satisfied—

(a) that it is expedient to restrict the movements of such criminal tribe, or to settle it in a place of residence, and

(b) that the means by which it is proposed that such criminal tribe shall earn its living are adequate, the ²[Government] may itself or authorise ¹[any officer appointed by the Government in this behalf] to publish in the Jammu and Kashmir Government Gazette a notification declaring that such criminal tribe shall be restricted in its movements to the area specified or shall be settled in the place of residence specified and the ¹[Government or any officer appointed by the Government in this behalf] may publish a notification accordingly.

Power to vary specified Government in this behalf may at any time by a like notification vary the terms of any notification published by him under section 12 by specifying another area to which the movements of the criminal tribe shall be restricted, or another place of

residence in which it shall be settled.

Verification of presence of members of tribe within precribed area or place of residence, place of residence, before such person as may be prescribed in

this behalf.

Words in brackets substituted for the words "Minister-in-charge of the Police Department" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.
"See footnote under section 3.

15. When the area to which the movements of a criminal tribe or any members thereof are restricted, or the place of residence in which Transfer of register in a criminal tribe is settled, is situated in a certain cases. a district other than that in which the register mentioned in section 4 was prepared, the register shall be transferred to the Superintendent of Police concerned and District Magistrate of the said District shall thereupon be empowered to exercise the powers provided in sections 7, 8 and 9.

SETTLEMENTS AND SCHOOLS.

- 16. The '[Government] may establish industrial, agricultural or reformatory settlements and Power to place tribe in may place therein any criminal tribe or any settlement. part thereof, in respect of which, a notification has been published under section 12.
- 17. (I) The '[Government] may establish industrial, agricultural or reformatory schools for children Power to place children and may separate and remove from their in schools and to apprentice them. parents or guardians and place in such schools the children of members of any criminal tribe in respect of which a notification has been published under section 12.

(2) For every school established under sub-section (1) a Superintendent shall be appointed by the '[Government].

(3) The provisions of sections 18 to 22 (both inclusive)

of the Reformatory Schools Act, 1897, shall, so far as may be, apply in the case of every school for children established under this section as if the Superintendent of such school were a Superintendent and the children placed in such schools were youthful offenders within the meaning of that Act.

(4) For the purposes of this section the term "children" includes all persons under the age of 18 and above the age of

6 years.

(5) The decision of the District Magistrate as to the age of any person for the purposes of this section shall be final.

18. The '[Government] may at any time, by general or special order, direct any person who may Power of Government to be in any industrial, agricultural or reformdischarge or remove persons from settlement or atory settlement or school in the province, school.

(a) to be discharged, or (b) to be removed to some other like settlement or school in the State.

See footnote under section 3.

19. Every order of the District Magistrate passed under section 5, 6, 7 or 8 shall be subject to revision by the High Court, Jammu and Kashmir State.

RULES.

20. (1) The '[Government] may make rules to carry out the purposes and objects Powers to make rules. of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate-

(a) the form and contents of the register prescribed in

section 4;

(b) the mode in which the notice prescribed in section 5 shall be published and the means by which the persons whom it concerns and the village headman, village watchman and land-owners or occupiers of the village in which such persons reside, or the agents of such land-owners or occupiers, shall be informed of its publications;

(c) the addition of names to the register and the erasure of names therein, and the mode in which the notice prescribed

in section 7 shall be given;

(d) the mode in which the persons mentioned in section to shall report themselves, or notify their residence or any change or intended change of residence or any absence or intended absence;

(e) the nature of the restrictions to be observed by persons whose movements have been restricted by notifications

under section 12 or section 13;

(f) the conditions as to holding passes under which persons may be permitted to leave the place in which they are settled or confined or the area to which their movements are restricted;

(g) the conditions to be inserted in any such pass in re-

gard to:

(i) the places where the holder of the pass may go or

(ii) the persons before whom, from time to time, he shall be bound to present himself; and

(iii) the time during which he may absent himself,

(h) the place and time at which and the persons before whom members of a criminal tribe shall attend in accordance with the provisions of section 14;

(i) the inspection of the residences and villages of any criminal tribe;

(j) the terms upon which registered members of criminal tribes may be discharged from operation of this Act;

(k) the management, control, and supervisions of industrial, agriculture or reformatory settlements and schools;

(1) the works on which and the hours during which persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rates at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus

proceeds, of their labour; and

(m) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or school, or otherwise offending against the rules for the time being in force, shall be subject, the periodical visitation of such settlement or school, and the removal from it of such persons as it shall seem expedient to remove.

PENALTIES AND PROCEDURE.

21. Whoever, being a member of a Panalties for failure to criminal tribe, without lawful excuse, (the comply with terms at burden of proving shall lie upon him,) notice under section o or

(a) fails to appear in compliance with a notice issued under section 5, or 7, or

(b) intentionally omits to furnish any information re-

quired under those sections, or

(c) when required to furnish information under either of those sections, furnishes as true any information which he

knows or has reason to believe to be false, or

- (d) refuses to allow his finger-impressions to be taken, may be arrested without warrant and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.
- 22. (1) Whoever, being a registered member of a criminal Penalties for breach of tribe, violates a rule made under clause rules. (e), clause (f) or clause (g) of section 20 shall be punishable with imprisonment for a term which may extend,-

(a) on first conviction to one year,

(b) on a second conviction to two years, and (c) on any subsequent conviction to three years.

(2) Whoever, being a registered member of a criminal tribe, violates a rule made under any other clause of section 20 shall be punishable:—

(a) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both and

(b) on any subsequent conviction, with imprisonment for a term which may extend to one year or with fine which

may extend to five hundred rupees, or with both.

23. (1) Whoever, being a member of any criminal tribe,

Enhanced punishment for certain offences by members of criminal tribe after previous conviction.

and having been convicted of any of the offences under the Ranbir Dand Bidhi specified in the schedule, is hereinafter convicted of the same or any other offence specified in the said schedule, shall be liable—

(a) on a second conviction to imprisonment for a term

which may extend to 7 years, and

(b) on a third conviction, to imprisonment for life.

(2) Nothing in this section shall effect the liability of such person to any further or other punishment to which he may be liable under the 'Ranbir Dand Bidhi or any other law.

Punishment for registered members of criminal tribe found under suspicious circumstances.

24. Whoever, being a registered member of any criminal tribe, is found in any place under such circumbstances as to satisfy the Court—

(a) that he was about to commit, or aid in the commis-

sion of, theft or robbery, or

(b) that he was waiting for an opportunity to commit theft or robbery,

shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to one thousand rupees.

25. (1) Whoever, being a registered Arrest of registered per.

member of a criminal tribe:son found beyond prescrib. ed limits.

(a) is found in any part of the State, beyond the area, if any, prescribed for his residence, without the prescribed pass, or in a place or at a time not permitted by the condition

of his pass, or (b) escapes from an industrial, agricultural or reforma-

tory settlement or school; may be arrested without warrant by any Police Officer, village headman or village watchman, and taken before any Magistrate who on proof of the facts shall order him to be removed to the district in which he ought to have resided or to the settlement or school from which he has escaped (as the

case may be), there to be dealt with in accordance with this

Act or any rules made thereunder.

(2) The rules for the time being in force for the removal shall apply to all persons removed under this section or under any other provision of this Act:

Provided that an order from the '[Government] or from the '[Inspector General of Prisons] shall not be necessary for

the removal of such persons.

(1) Every village headman and village watchman in a village in which any person belonging Duties of village headto a criminal tribe resides, and every ownman, village watchman and owners or occupiers er or occupier of land on which any such of land to give informapersons reside or the agent of any such tion in certain cases. owner or occupier shall forthwith communicate to the officerin-charge of the nearest Police Station any information which he may obtain of-

(a) the failure of any such person to appear and give

information as directed in section 5; or
(b) the departure of any registered member of a criminal tribe from such village or from such land (as the case may

be).

(2) Every village headman and village watchman in a village, and every owner or occupier of land or the agent of such owner or occupier, shall forthwith communicate to the officer-in-charge of the nearest Police Station any information which he may obtain of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any criminal tribes.

27. Any village headman, village watchman, owner or occupier of land or the agent of such owner Panalties for breach of or occupier, who fails to comply with the such duties. requirements of section 26 shall be deemed to have committed an offence punishable under "section 136 of Ranbir Dand

Bidhi.

SUPPLEMENTAL.

28. No court of justice shall question the validity of any notification published under the provisions Bar of jurisdiction of of section 3, section 12 or section 13 on courts in questions relating to notifications under the ground that the provisions hereinbefore sections 3, 12 and 13. contained or any of them have not been

¹⁸ee footnote under section 3. In section 25 (2) provise words "Inspector General of Prisons" substituted for "Minister In-charge Jail Department" vide Act X of 1996 published in the Government G.zette dated 15th Bhadon 1996. Sections 175, 176 Ranbir Penal Code.

complied with or entertain in any form whatever the question whether they have been complied with, but every such notification shall be conclusive proof that it has been issued in accordance with law.

29. The law relating to Criminal Tribes as sanctioned under State Council Resolution No. 34 dated 8th February 1890 is hereby repealed.

The Schedule.

CHAPTER XII.

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| 232 | | Counterfeiting King's coin. |
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| 239 | 182 | Delivery of coin, possessed with the knowledge that it is counterfeit. |
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| 827 | 246 | Voluntarily causing hurt to extort property or to constrain to an illegal act. |

¹Corrosponding numbers of sections of the Ranbir Penal Code are given by the Editor for facility of reference.

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328 Causing hurt by means of poison, etc., with intent to commit an offence.

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332 { from his duty. Voluntarily causing grievous hurt to deter public servant from his duty.

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397 300 Robbery or dacoity, with attempt to cause death or grievous hurt.

398 301 Attempt to commit robbery or dacoity when armed with deadly weapon.

399 302 Making preparation to commit dacoity.

454 456 Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.

455 347 Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.

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THE STATE BUILDINGS ACT, 1976

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SECTION.

- 1. Short title, extent and com- regulate the erection, etc. of build-mencement. ings within Municipalities.
 - 2. Municipal authority defined. 4. Objections or suggestions as to gerection, etc. of certain State buildings
- 3. Exemption of certain State within Municipalities how to be made buildings from Municipals Laws to and dealt with.

THE STATE BUILDINGS ACT, 1976.

(NOTIFICATION No. 19 DATED 6TH MARCH 1920.)

(Sunctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's letter No 16679, dated 31st January 1920.)

An Act to provide for the exemption from the operation of Municipal Building Laws of certain Buildings and Lands which are the property, or in the occupation, of the State, and situate within the limits of Municipality.

Whereas it is expedient to provide for the exemption from the operation of Municipal Building Laws of certain buildings and lands which are the property, or in the occupation, of the State, and situate within the limits of a Municipality; it is hereby enacted as follows:—

Short title, extent and commencement.

1. (I) This Act may be called the State Buildings Act, 1976.

(2) It extends to the whole of Jammu and Kashmir State; and

(3) It shall come into force at once.

2. In this Act the expression "Municipal authority" in"Municipal authority" cludes a Municipal Committee or a body of
defined. Municipal Commissioners constituted by,
or under the provisions of, any law or enactment for the time
being in force.

Exemption of certain state buildings from Municipal Laws to regulate the erection, etc. of buildings within Municipalities.

Contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any Municipality, shall apply to any building used or required for the public service,

or for any public purpose, which is the property, or in the occupation, of the State, or which is to be erected on land

which is the property, or in the occupation of the State:

Provided that, where the erection, re-erection, construction, or material structural alteration, of any such building as aforesaid (not being a building connected with State defence, or building, the plan or construction of which ought, in the opinion of the Public Works Minister, to be treated as confidential or secret), is contemplated, reasonable notice of the proposed work shall be given to the Municipal authority before it is commenced.

Provided further that clause 4 of the rules relating to construction of buildings in the restricted area of Srinagar sanctioned by His Highness (vide No. 4/C.O., dated the 17th January 1915) shall also mutatis mutandis apply to any such

building as aforesaid.

Resident in Kashmir under the rule mentioned in the last foregoing proviso shall be made by the Public Works Minister.

Objections or suggestions or suggestions as to erection, etc.

of certain tate buildings within Municipalities how to be made and dealt with.

Objections or suggestion of suggestions as to erection, etc.

of certain tate buildings buildings the plan or construction of which ought, in the opinion of the Public Works with.

Minister to be treated as confidential or

with. Minister to be treated as confidential or secret), the Municipal authority, or any person authorised by it in this behalf, may, with the permission of the Public Works Minister, inspect the land and building and all plans connected with its erection, re-erection, construction or material structural alteration, as the case may be, and may submit to the Public Works Minister a statement in writing of any objections or suggestions which such Municipal authority may deem fit to make with reference to such erection, re-erection, construction, or material structural alteration.

(2) Every objection or suggestion submitted as aforesaid shall be considered by the Public Works Minister, who shall, after such investigation (if any) as he shall think advisable, pass orders thereon, and the building referred to therein shall be erected, re-erected, constructed, or altered, as the case may

be, in accordance with such orders:

Provided that, if the Public Works Minister overrules or disregards any such objection or suggestion as aforesaid, he

shall give his reasons for so doing in writing.

(3) Every order passed by the Public Works Minister under this section will be subject to revision by His Highness and the decision of His Highness thereon shall be final.

July, 1927.

THE PUBLIC PROSTITUTES REGISTRATION RULES, 1977.

CONTENTS.

RULE.

RULE.

- 1. Title.
- 2. Extent.
- 3. Definition.
- Duty of public prostitute to have her name registered.
- 5. Register.
- 6. Application for registration
- 7. Registration. 8. Cancellation.
- Prohibition of transfer of certificate of registration.
- Power of inspection.
 Change of residence.
- 12. Leaving place of registration.
- 13. Removal of name on account of permanent departure.
- 14. Registration at one place will not entitle residence or business at another.

- 15. Brothel keeper not to allow unregistered public prostitute to resort for prostitution in brothel.
- 16. Power of Minister-in-charge of Municipalities to prohibit brothel or residence of public prostitute within any specified locality.
- 17. Power of minister-in-charge of Municipalities to prohibit public prostitute from visiting any specified locality during certain hours and subject to conditions prescribed.
- 18. Penalties.

Schedule A. Schedule B.

THE PUBLIC PROSTITUTES REGISTRATION RULES, 1977.

Rules to provide for the control of Public Prostitutes.

(Sanctioned by the Durbar vide Chief Minister's letter No. 17197 dated 12th February 1921.)

1. These rules may be called the "Public Prostitutes Registration Rules, 1977".

2. (i) These rules shall not come into force in any part of the Jammu and Kashmir State unless and until they have been declared applicable thereto by the '[Minister-in-charge of Municipalities] as hereinafter provided.

(ii) The Minister-in-charge of Municipalities, may, by a notification in the Jammu and Kashmir Government Gazette, apply these rules to any place within the Jammu and Kashmir State. The limits of such place shall for the purposes of these rules, be such as may be defined in the said notification.

(iii) The Minister-in-charge of Municipalities may, in the

'Wherever the words "Home Minister" occur in the rules, the words "the Minister-incharge of Municipalities" sabstituted. See also footLote I under Rule 4. manner aforesaid, cancel or amend any notification issued under clause (ii) of this rule.

3. In these rules, "Public Prostitute" means a woman who earns her livelihood by offering her

person to lewdness for hire.

Duty of public prostitute prostitute starting or carrying on or continuing business as such public prostitute to have her name tute, within the limits of any place where these rules are in force shall, in the manner herein provided have her name entered in the register kept at such place and obtain a certificate of registration as prescribed by rules 5 and 7.

5. (i) A register of public prostitutes shall be prepared in the form prescribed in schedule A of these rules and shall be kept in the office of the Wazir-i-Wazarat or other public servant especially empowered in this behalf by the Minister-in-charge of Municipali-

ties with the previous sanction of His Highness.

(ii) The register shall from time to time be revised under

the orders of the Minister-in-charge of Municipalities.

6. (i) Every woman who is bound to be registered as a public prostitute at a place where these rules are in force shall make an application in person for registration to the officer charged with preparation of the register provided by rule 5 at such place.

(ii) The application shall be in writing, ²[shall be accompanied by a payment of Rs. 5 as registration fee] and shall state the name, parentage, caste, age, residence and business of the applicant and shall be signed and verified by the applicant in the manner provided for signing and verifying the

plaints by the Code of Civil Procedure.

7. (i) On receipt of application made to him under rule 6, the officer concerned shall, unless he considers it expedient on grounds of public policy to disallow it, cause necessary particulars to be entered in the register prepared in his office under rule 5, and a certificate of registration to be prepared under his signature in the form prescribed in Schedule B of these rules and issued to the applicant.

(ii) The certificate issued under this rule shall be a presumptive proof of its holder being a person registered under

these rules.

Proviso to rule 4 omitted, vide Notification No. 12-S dated 9th October 1933 published in Government Gasette dated 3rd Katik 1990.

In rule 6 (ii) words in brackets added vide Notification 12-S dated 9th October, 1933 published in Government Gasette dated 3rd Katik 1990.

8. (i) Any registered public prostitute may, at any time, apply to have her name removed from the Cancellation. register on the ground that she intends to cease the business for which her name is registered and if the officer, in whose register she is entered, is satisfied that he has truly stated such intention, her name shall be removed from

the register.

(ii) The officer charged with the preparation of the register provided by rule 5 on being satisfied that carrying on of business by a registered public prostitute, in any place within his jurisdiction, is undesirable on grounds of public policy, may remove her name from his register, and on such removal of her name from the register she shall cease to carry on her business within the limits of such place. '[The notice informing a public prostitute to cease business in a certain locality shall be served on her in the manner prescribed for the service of summons in the Code of Civil Procedure.]

(iii) The certificate of registration shall be returned by the person whose name has been so removed from the register

to the officer concerned and cancelled by him.

9. No public prostitute registered under these rules shall transfer or lend her certificate of registra-Prohibition of transfer of certificate of registra- tion to any other person on any account tion.

or for any purpose whatsoever.

10. It shall be competent to the officer, in whose register a public prostitute has been registered, Power of inspection. to inspect or to a Police Officer not lower in rank than that of an officer in charge of a Police Station to inspect her certificate of registration and every such public prostitute when required to do so shall exhibit her certificate of registration to such officer.

11. When any registered public prostitute wishes to change her residence in any place where Cuange of residence. she has been registered she shall signify her intention to the registering officer of such place who shall cause such change or residence to be noted in the register and

in her certificate of registration.

12. Whenever any registered public prostitute wishes to Leaving place of regis. leave the place in which she has been registered for a time or permanently, she shall signify tration. her intention to the registering officer of such place. officer shall cause a note of her intention to be made in the register and in her certificate of registration. If she intends

Words in brackets in rule 8 (ii) added vide Notification No. 12-8 dated 9th October, 1983 published in Government Gazette dated 3rd Katik 1990.

to leave the place permanently she shall before departure de-

liver her certificate to the said officer.

On the permanent departure from the place of registration or on the death of any registered public prostitute, her name shall be re-Removal of name on account of permanent demoved from the register, and certificate of parture.

registration shall be cancelled.

14. The registration of a public prostitute, or issue of certificate of such registration in her favour at one place shall not in any way authorise Registration at one place will not entitle resisuch public prostitue to carry on her busidence or business at anness in any other place where these rules other.

are in force and she has not been duly registered.

15. If any brothel keeper has reason to believe any wom-

Brothel keeper not t. allow unregistered public prostitute to resort for prostitution in brothel.

an to be a public prostitute and not to be registered under these rules, he or she shall not induce her or suffer her to resort or be for the purpose of prostitution, to or in the

house, room, tent, boat, or place in which he or she carried on his or her business.

Fxp:anation.—"Brothel keeper" means the occupier of any house, room, tent, boat, or place resorted to by persons of both sexes for the purpose of committing sexual immorality and every person managing or assisting in the management of any such house, room, tent, boat or place.

The Minister-in-charge of Municipalities, may with

Power of Minister-incharge of Municipalities to prohibit brothel or residence of public prostitute within any specified locality.

the sanction of His Highness, by notification published in the Jammu and Kashmir Government Gazette, prohibit the keeping of a brothel or the residence of a public prostitute in any specified part of the

place to which thes: rules apply.

17. The Minister-in-charge of Municipalities may, by

Power of Winister-incharge of Municipalities to prohibit public prostitute from visiting any specified locality during certain hours and subject to conditions prescribed.

- alphaber alterna

notification published within the limits of the place to which these rules apply, prohibit public prostitues from visiting any specified locality within such place, except during such hours and subject to such condit ons as he may think fit to prescribe.

18. Whoever acts in contravention of these rules or any notice or orders issued thereunder shall, on convict on before a Magistrate, be liable to be sentenced to a fine not exceeding Rs. 100 or simple imprisonment not exceeding a period of one month or with both.

Rule 18 added vide Notification No. 12-8 dated 9th October, 1938 published in the Government Gazette dated 8rd Katik 1990.

SCHEDULE A (RULE 5).

Registration of public prostitutes etc.

| No. | Date of registering. | Name | Parentage. | Caste. | Age and per- sonal appear- ance, | Place of resi- | Nature of business, | Remarks. |
|-----|----------------------|------|------------|--------|--|----------------|---------------------------|---|
| | | | | | | | | En- trie unde rule 8, 1) 12, and 13. |

SCHEDULE B (Rule 7).

Certificate of registration at I (name of officer) hereby certify that (name of applicant) daughter of caste age who (personal appearance) has been registered (vide No. dated of the Register of public prostitutes) as a public prostitute and her place of residence shall be dated (place) the 19

THE SRI PRATAP JAMMU AND KASHMIR LAWS CONSOLIDATION ACT, 1977.

Act No. IV of 1977.

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SECTION.

- 1. Title, extent and commencement.
- 2. Repealed.
- 3. Repealed.
- 4. Laws in force.
- 5. Customs and Mercantile usages.
- 6 to 9-A. Repealed.
- His Highness' powers under the constitution.

- 11. Extent.
- 12. Repealed.

The First Schedule—Repeal-

ed.

The Second Schedule—Repealed.

The Third Schedule.—Repealed.

The Fourth Schedule.—Repealed.

THE SRI PRATAP JAMMU & KASHMIR LAWS CONSOLIDATION ACT, 1977.

Act No. IV of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Min ster's letter No. 8372, dated the 11th September 1920 and State Council Resolution No. 1, dated 8th April 1925 (Notification No. 14-L/82).]

Whereas it is expedient to amend, consolidate and codify as far as possible and declare the laws generally administered and to be administered by the Civil and Criminal Courts of the Jammu and Kashmir State; it is hereby enacted as follows:—

PRELIMINARY.

1. (i) This Act may be called the Sri Pratap Jammu and Kashmir Laws (Consolidation) Act, 1977.

(ii) It extends to the whole of the State of Jammu and

Kashmir.

'(iii) And it shall come into force on and from such date as may by notification in the Jammu and Kashmir Government Gazette be specified in this behalf.

²2. Repealed.²3 Repealed.

4. (I) The Laws administered and to be administered by the Civil and Criminal Courts of the State of Jammu and Kashmir are and shall be as follows:—

"[(a) The Acts for the time being in force in the

the Jammu and Kashmir State;

(b) Proclamations and Ordinances made and passed by His Highness by virtue of his inherent authority and for the the time being in force;

(c) the rules having the force of law made and promugated under the provisions of any Act or law for the

It was enforced for a period of two years in the first instance from 1st Baisakh, 1978 (per Chief Minister's endorsement No. 8372, dated 11th September 1920 and letter No. 115291/9 gdl date i the 1st November 1920). From time to time its enforcement was extended for further periods. From 1st Baisakh, 1981 it was ordered that it should remain and continue in force without limit of time vid: State Council Resolution No. 1, dated 8th April, 1925 (Notification No. 14-L/81).

Sections 2 and 3 repealed vide Act XI of 1996 published in the Government Gazette dated 15th Bhadon 1996.

In section t clauses (a), (b) and (c) substituted and clause (f) made sub-section (2) of this section and rest of this section numbered as sub-section (1) vide Act XI of 1996 published in the Government Gasette dated 15th Bhadon 1996,

time being in force in the State of Jammu and Kashmir;]

(d) in questions regarding succession, inheritance, special property of females, betrothals, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, waqf, partitions, castes or any religious usage or institution, the rule of decision is and shall be-

the Mohammedan Law in cases where the parties are Mohammedans and the Hindu Law in cases where the parties are Hindus, except in so far as such law has been, by this or any other enactment, altered or abolished or has been modified by any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority;

(e) in questions relating to the Law of Tort, the State Courts shall follow, as far as practicable, the British Indian

Law.

- (2) In cases not otherwise specially provided for, the Courts shall act according to justice, equity and good conscience.
- 5. All local customs and mercantile usages shall be regarded as valid, unless they are contrary to Customs and Mercantile justice, equity and good conscience, or have usages. been, or shall be, declared to be void by any competent authority.

¹6 Repealed.

- 7. Repealed.
- 18. Repealed.
- ¹9. Repealed.

¹9-A. Repealed.

Nothing contained in any law or Act in any way be deemed to derogate from The Highness' powers under the constitution. the powers of His Highness vested in him under the constitution.

11. ²[All Acts now in force or hereafter to be enacted] shall, unless otherwise expressly provided, Extent. extend to the whole of Jammu and Kashmir State, but His Highness may, in his discretion, by notification in the Jammu and Kashmir Government Gazette, exempt any area or class of persons from the operation of any Act or restrict the application of any Act to any specified area or class of persons.

Sections 6. 7, 8,9 and 9-A repealed wide Act XI of 1996 published in the Govern-

tment Gazette dated 15th Bhadon 1996. In section 11 words in brackets substituted for the words "The enactment embodied in schedules II and III of this Regulation" wide Act X1 of 1996 published in Government Gazette dated 15th Bhadon 1996.

12. Repealed.

The First Scheduule ...
The Second Schedule ...

²The Third Schedule .. Repealed. .. Repealed. .. Repealed.

THE ANCIENT MONUMENTS PRESERVATION ACT, 1977. Act No. V of 1977.

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 Owners under disability or not in possession.

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17. Power of Government to control traffic in antiquities.

.. Repealed.

.. Repealed.

PROTECTION OF SCULPTURES
CARVINGS, IMAGES, BASBELIEFS, INSCRIPTIONS OR LIKE
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21. Assessment of market value or con pensation.

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Bhadon 1996.

The First Schedule, the Second schedule, the Third Schedule and the Fourth schedule repealed vide Act X1 of 1996 published in Government Gazette dated 15th Bhadon 1996.

THE ANCIENT MONUMENTS PRESERVATION ACT, 1977.

Act No. V of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September 1920 and State Council Resolution No. 1, duted 8th April 1925, (Notificaton No. 14-L/81).]

An Act to provide for the preservation of Ancient Monuments and of objects of archæological, historical or artistic interest.

Whereas it is expedient to provide for the preservation of ancient monuments, for the exercise of control over traffic in antiquities and over excavation in certain places, and for the the protection and acquisition in certain cases of ancient monuments and of objects of archæological, historical or artistic interest; it is hereby enacted as follows:-

Omitted.

- 2. In this Act, unless there is anything repugnant in the subject or context:— Definitions.
- (I) "Ancient monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archæological or artistic interest, or any remains thereof and includes-

(a) the site of an ancient monument;

(b) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and

(c) the means of access to and convenient inspection of

an ancient monument:

(2) "Antiquities" include any moveable objects which the Government, by reason of their historical or archæological associations, may think it necessary to protect against injury, removal or dispersion:

(3) Omitted.

(4) "maintain" and "maintenance" include the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto:

(5) "land" includes a revenue-free estate, a revenue paying estate, and a permanent transferable tenure whether such estate or tenure be subject to incumbrance, or not:

(5-a) "Minister" means the Minister-in-charge of the

Archæological Department, and

(6) "Owner" includes a joint owener invested with powers of management on behalf of himself and other joint owners, and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner and the successor in office of any such manager or trustee:

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such

manager or trustee.

3. (1) The '[Government] may, by notification in the Government Gazette, declare an ancient Protected monuments. monument to be a protected monument

within the meaning of this Act.

- (2) A copy of every notification published under sub-section (I) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the '[Government] within two months from the date when it is so fixed up will be taken into consideration.
- (3) On the expiry of the said period of two months, the '[Government] after considering the objections, if any, shall confirm or withdraw the notification.
- (4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act.
- 4. (1) The Superintendent of Archæology, with the sanction of 2[the Government], may purchase Acquisition of rights in or take a lease of any protected monuor guardianship of an ancient monument. ment.
- (2) The Superintendent of Archæology, with the like sanction, may accept a gift or bequest of any protected monument.
- (3) The owner of any protected monument may, by written instrument, constitute the Minister the guardian of the monument, and the Minister may, with the sanction of 2[the Government] accept such guardianship.

'Substituted for "Minister" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

^{&#}x27;In section 4, 5, 10, 15, 17, 18, 19, and 23 for the words "His Highness" the words "t he Government" substituted (for distinction put within brackets) vide Act X of 1996 pu blished in Government Gazette dated 15th Bhadon 1996,

(4) When the Minister has accepted the guardianship of a monument under sub-section (3), the owner shall, except as expressly provided in this Act, have the same estate, right, title and interest in and to the monument as if the Minister had not been constituted guardian thereof.

(5) When the Minister has accepted the guardianship of a monument under sub-section (3), the previsions of this Act relating to agreements executed under section 5 shall apply to the written instrument executed under the said sub-section.

(6) Where a protected monument is without an owner, the Minister may assume the guardianship of the monument.

5. (I) The Superintendent of Archæology may, with the previous sanction of '[the Government], propose to the owner to enter into an agreement with '[the Government] for the preservation of any protected monument in his district.

(2) An agreement under this section may provide for the following matters, or for such of them as it may be found

expedient to include in the agreement:-

(a) the maintenance of the monument;

(b) the custody of the monument, and the duties of any

person who may be employed to watch it;

(c) the restriction of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument;

(d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the Superintendent of Archæology to inspect or main-

tain the monument;

(e) the notice to be given to the Government in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the Government to purchase such land, or any specified portion of such land, at its market value;

(f) the payment of any expenses incurred by the owner or by the Government in connection with the preservation of

the monument;

(g) the proprietary or other rights which are to vest in [the Government] in respect of the monument when any expenses are incurred by the Government in connection with the preservation of the monument;

(h) the appointment of an authority to decide any dis-

pute arising out of the agreement; and

(i) any matter connected with the preservation of the

monument which is a proper subject of agreement between

the owner and the Government.

(3) An agreement under this section may be executed by the Superintendent of Archæclogy on behalt of '[the Government], but shall not be so executed until it has been approved by '[the Government].

(4) The terms of an agreement under this section may be altered from time to time with the sanction of '[the Govern-

ment] and with the consent of the owner.

(5) With the previous sanction of '[the Government], the Superintendent of Archæology may terminate an agreement under this section on giving six months' notice in writing to the owner.

(6) The owner may terminate an agreement under this section on giving six months' notice to the Superintendent of

Archæology.

(7) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(8) Any rights acquired by Government in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this

section.

or not in possession.

(I) If the owner is unable, by reason of infancy or other disability, to act for himself, the person of in possession.

or not in possession.

on owner by section 5.

(2) In the case of village-property, the headman or other village-officer exercising powers of management over such property may exercise the powers conferred upon an owner by

section 5.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

7. (I) If the Superintendent of Archæology apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface, or imperil the monument or to build on or near the site thereof in contravention of the terms of an agree-

ment for its preservation under section 5, the Governor on the motion of the Superintendent of Archæology may make an order prohibiting any such contravention of the agree. ment.

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5 refuses to do any act which is in the opinion of the Superintendent of Archæology necessary to such preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the Superintendent of Archæology, the Superintendent of Archæology may authorise any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land revenue.

(3) A person aggrieved by an order made under this section may appeal to the Minister, who may cancel or modify

it and whose decision shall be final.

8. Every person who purchases, at a sale for arrears of

land revenue or any other public demand, an estate or tenure in which is situated a monument in respect of which any instrument has been executed by the owner for the time being, under section 4 or section 5, and every person claiming any title to a monument from, through or under an

owner who executed any such instrument, shall be bound by

such instrument.

Purchasers at certain sales and persons claiming

through owner bound by instrument executed by

owner.

9. (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, re-Application of endowfuses or fails to enter into such an agreement to repair of an anment when proposed to him by the Supercient monument.

intendent of Archæology, and if any endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others, the Superintendent of Archæology may institute a suit in the Court of the District Judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an application to the District Judge for the proper application of such endowment or part thereof.

(2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass an order for the proper application of the endowment or of any part thereof, and any such order may be exe-

cuted as if it were the decree of a Civil Court.

10. (1) If [the Government] apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, '[the Compulsory purchase Government, may proceed to acquire it under the provisions of the Land Acquisition Act, as if the preservation of a protected monument were a "public purpose" within the meaning of that Act.

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of—

(a) any monument which or any part of which is periodically used for religious observances; or

(b) any monument which is the subject of a subsisting

agreement executed under section 5.

- (3) In any case other than the cases referred to in subsection (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed, within such reasonable period as the Superintendent of Archæology may fix in this behalf, to enter into an agreement proposed to him under the said section or has terminated or given notice of his intention to terminate such an agreement.
- ²[10-A. (1) If the Government is of opinion that mining, quarrying, excavating, blasting and other rower of Government to control mining etc., operations of a like nature should be near ancient mounments. restricted or regulated for the purpose of protecting or preserving any ancient monument, the Government may, by notification in the Government Gazette, make rules:-

(a) fixing the boundaries of the area to which the rules

are to apply,

(b) forbidding the carrying on of mining, quarrying, excavating, blasting or any operation of a like nature except in accordance with the rules and with the terms of a licence, and,

(c) prescribing the authority by which and the terms on which licences may be granted to carry on any of the said

operations.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which may extend to two hundred rupees.

(4) If any person or occupier of land included in a notification under sub-section (1) proves to the satisfaction of the

See footnote under section 4. *Section 10-A inserted vide Act 1 of 1996 published in Government Gazette dated 19th SaWan 1996.

Government that he has sustained loss by reason of such land being so included, the Government shall pay compensation in respect of such loss.]

Maintenance of certain protected monuments.

Minister shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in section 4 or which the Government has

acquired under section 10.

(2) When the Minister has accepted the guardianship of a monument under section 4, he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times, by himself or by his agents, subordinates and workmen, for the purpose of inspecting the monument, and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof.

The Minister may receive voluntary contributions towards the cost of maintaining a protected monument and may give orders as to the management and application of any funds so received by him;

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for

which it was contributed.

13. (1) A place of worship or shrine maintained by the Protection of place of worship from misuse, used for any purpose inconsistent with its pollution or desecration.

(2) Where the Superintendent of Archæology has, under section 4, purchased or taken a lease of any protected monument, or has accepted a gift or bequest, or the Minister has, under the same section, accepted the guardianship thereof, and such monument, or any part therof is periodically used for religious worship or observances by any community, the Superintendent of Archæology in consultation with the Governor shall make due provision for the protection of such monument, or such part thereof from pollution or desecration—

(a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is

used, or
(b) by taking such other action as he may think neces-

sary in this behalf.

14. '[The Government] may— (a) where rights have been acquired Relinquishment Government | right, in a by Government in respect of any monument under this Act by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired; or

(b) relinquish any guardianship of a monument which

it has accepted under this Act.

15. (1) Subject to such rules as may after previous publication be made by 2[the Government], of access to the public shall have a right of access to certain protected monuany monument maintained by the Government under this Act.

(2) In making any rule under sub-section (1) ³[the Government] may provide that a breach of it shall be punishable

with fine which may extend to twenty rupees.

16. Any person other than the owner who destroys, removes, injures, alters, defaces or imperils a protected monument, and any owner who Penalties. destroys, removes, injures, alters, defaces or imperils a monument maintained by Government under this Act or in respect of which an agreement has been executed under section 5, and any owner or occupier who contravenes an order made under section 7, sub-section (1), shall be punishable with fine which may extend to five thousand rupees, or with imprisonment which may extend to three months, or with both.

TRAFFIC IN ANTIQUITIES.

17. (1) If '[the Government] apprehends that antiquities are being sold or removed to the detriment the State or of any neighbouring Power of Government to control traffic in country, he may, by notification in the antiquities. Government Gazette, prohibit or bringing taking of any antiquities or class of the antiquities described in the notification into or out of the State or any specified part of the State.

(2) Any person who brings or takes or attempts to bring or take any such antiquities into or out of the State or any part of the State in contravention of a notification issued under sub-section (1), shall be punishable with fine which may ex-

tend to five hundred rupees.

^{&#}x27;In Section 14 the words "The Government" substituted for the words "With the sanction of the His Highness, the Minister" vide Act X of 1996 published in the Government Gaset te dated 15th Bhadon 1996. "See footnote under section 4.

- (3) Antiquities in respect of which an offence referred to in sub-section (2) has been committed shall be liable to confiscation.
- (4) A Revenue Officer not lower in rank than a Naib-Tehsildar, an officer of Customs, or an officer of Police of a grade not lower than Assistant Inspector or Deputy Inspector, duly empowered by '[the Government] in this behalf, may search any vessel, cart or other means of conveyance, and may open any baggage or package of goods, if he has reason to believe that goods in respect of which an offence has been committed under sub-section (2) are contained therein.

(5) A person who complains that the power of search mentioned in sub-section (4) has been vexatiously or improperly ex reised may address his complaint to [the Government] and the [the Government] shall pass such order and may award such compensation, if any, as appears to it to be just.

PROTECTION OF SCULPTURES, CARVINGS, IMAGES, BAS- ELIEFS, INSCRIPTIONS OF LIKE O JECTS.

18. (1) If 'the Government consider that any sculp-

Power of Government to control moving of sculptures, carvings or like objects. tures, carvings, images, bas-reliefs, inscriptions or other like objects ought not to be moved som the place where they are without the sanction of the Government, '[the Government! may, by notification in the

Government Gazette, direct that any such object or any class of uch objects shall not be moved unless with the written permission of the Superintendent of Archæology.

(2) A person applying for the permission mentioned in sub-section (1) shall specify the object or objects which he proposes to move, and shall furnish, in regard to such object or objects, any information which the Superintendent of Archæology may require.

(3) I the Superintendent of Archæology refuses to grant such permission, the applicant may appeal to the Minister, whose decision shall be final.

(4) Any person who moves any object in contravention of a not fication issued under sub-section (I), shall be punishable

with fine which may extend to five hundred rupees.

(5. If the owne o any property proves to the satisfaction of the Government that he has suffered any loss or damage by reason of the inclusion of such property in a notification published under sub-section (I), [the Government]

"See footnote under section 4.

"In section 17(5) "Government" substituted for "Minister" vide Act X of 1996
published in Government Gazette dated 15th Bhaden 1996.

shall either—

(a) exempt such property from the said notification;

(b) purchase such property, if it be moveable, at its

market-value; or

(c) pay compensation for any loss or damage sustained by the owner of such property, if it be immoveable.

19. (I) If '[the Government] apprenend that any object mentioned in a notification issued under section 18, sub-section (1), is in Purchase of sculptures, danger of being destroyed, removed, incarvings of like object by jured or allowed to fall into decay, '[the the Government Government] may pass orders for the compulsory purchase of such object at its market-value, and the Superintendent of Archæology shall thereupon give notice to the owner of the object to be purchased.

(2) The power of compulsory purhase given by this sec-

tion shall not extend to-

(a) any image or symbol actually used for the purpose

of any religious observance; or

(b) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors or to any member of his family.

ARCHAEOLOGICAL EXCAVATION.

[20. (1) If the Government is of opinion that excavation for archæological purposes in any area Power of Government to notify areas as protected. should be restricted or regulated in the interest of archæological research, the Government may, by notification in the Government Gazette specifying boundaries of the area, declare it to be a protected area.

(2) From the date of such notification all antiquities buried in the protected area shall be the property of Government and shall be deemed to be in the possession of Government, and shall remain the property and in the possession of the Government until ownership thereof is transferred; but in all other respects the rights of any owner or occupier of land in such area shall not be affected.

20-A. (I) Any officer of the Archæological Department or any person holding a licence under Power to enter upon and section 20 B may, with the written permismake excavation in a sion of the Governor of the Province or in protected area. the case of Ladakh District, the Wazir of that District, enter

upon and make excavations in any protected area.

See foutnote under scetion 4 section 20 substituted and sections 20-A, 20-B and 20-C added wide Act 1 of 1996, published in Government Gazette dated 19th Sawan 1996.

(2) Where in the exercise of the power conferred by subsection (1) the rights of any person are infringed by the occupation or disturbance of the surface of any land, the Government shall pay to that person compensation for the infringement.

Power to Government to make rules regulating archæological excavation in prote ted are 18.

20-B. (I) The Government may make rules:—

(a) prescribing the authorities by whom licences to excervate for archæological purposes in a protected area may

be granted;

(b) regulating the conditions on which such licences may be granted, the form of such licences and the taking of security from licensees;

(c) prescribing the manner in which antiquities found by a licensee shall be divided between Government and the

licensee; and

(d) generally to carry out the purposes of section 20.

(2) The power to make rules given by this section is subject to the condition of rules being made after previous publication.

(3) Such rules may be general for all protected areas for the time being, or may be special for any particular protected

area er areas.

(4) Such rules shall provide that any person committing a breach of any such rule or any condition of a licence issued under this section shall be punishable with fine which may extend to one thousand rupees, and may further provide that where the breach has been by the agent or servant of a licensee the licensee himself shall be punishable.

Power to acquire a area contains an ancient monument or antiquities of national interest, it may acquire such area, or any part thereof, under the State Land Acquisition Act No. 10 of 1990 as for a public purpose.]

GENERAL.

Assessment of market under this Act, or the '[* * compensation to be paid by Government in respect of anything done under this Act, shall, where any dispute arises '[in respect] of such market-value or compensation.

"In section 21 words "amount of" in third line omitted and words "in respect" substituted for "touching the amount" in sixth line vide Act 1 of 1996, published in Govern-

ment Gazette dated 19th Sawan 1996.

sation, be ascertained in the manner provided by the Land

Acquisition Act, so far as it can be made applicable:

Provided that when making an inquiry under the said Land Acquisition Act, the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the Collector and one a person nominted by the owner or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Superintendent of Archæology.

22. A Magistrate of the third class shall not have jurisdiction to try any person charged with an

offence against this Act. Jurisdiction.

23. '[The Government] may make rules for carrying out any of the purposes of this Act. Power to make rules.

24. No suit for compensation and no criminal proceeding shall lie against any public servant in respect of any act done, or in good faith Protection to pulle intended to be done, in the exercise of any servants acting under Act. power conferred by this Act.

THE BANKERS' BOOKS EVIDENCE ACT, 1977.

Act No. VI of 1977.

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SECTION.

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THE BANKERS' BOOKS EVIDENCE ACT, 1977

Ac No. VI of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No 8372, dated 11th September 1920 and State Council Resolution No. I, dated 8th April 1925. (Notification No. 14-L/81).]

An Act to amend the Law of Evidence with respect to Bankers' Books.

Whereas it is expedient to amend the Bankers' Books Evidence Act, it is hereby enacted as follows:-

¹1. Omitted.

- 2. In this Act, unless there is something repugnant in the subject or context,— Definitions.
- (1) "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in the State or in British India or incorporated by an Act of Parliament or of the Governor-General in Council or by Royal Charter or Letters Patent:
 (2) "Bank" and "banker" mean—

(a) any company carrying on the business of bankers,(b) any parternership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided:

(c) any Post Office Savings Bank or money-order office.

(3) "Bankers' books" include ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank:

(4) "Legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration:

(5) "The Court" means the person or persons before

whom a legal proceeding is held or taken:

(6) "Judge" means a Judge of the High Court:

(7) "trial" means any hearing before the Court at which

evidence is taken: and

(8) "Certified copy" means a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

3. [The Government] may, from time to time, by noti-

fication in the Jammu and Kashmir Government Gazette, extend the provisions of Power to extend provithis Act to the books of any nership or individual carrying on the busisions of Act.

ness of bankers within the territories under its administration. and keeping a set of not less than three ordinary account books, namely, a cash-book, a day-book or journal, and a ledger, and

may in like manner rescind any such notification.

Subject to the provisions of this Act, a certified copy any entry in a banker's book shall all legal proceedings be received as prima facie evidence of the existence of such Mode of proof of entries entry, and shall be admitted as evidence of in bankers' books. and accounts the matters, transactions therein recorded in every case where, and to the same extent

as, the original entry itself is now by law admissible, but not further or otherwise.

5. No officer of a bank shall in any legal proceeding to

which the bank is not a party be compellable to produce any banker's book the Case in which officer or contents of which can be proved under this bank not compellable to produce books. Act, or to appear as a witness to prove the

matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

6. (1) On the application of any party to a legal proceed-

ing the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book Inspection of books by order of Court or Judge. for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time

to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relavant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner herein before directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or

Judge shall otherwise direct.

In section 3 "The Government" substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

7. (1) The costs of any application to the Court or a

Judge under or for the purposes of this Act and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a

party to the proceeding.

(3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a

decree for money passed by itself:

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

THE COURT-FEES ACT, 1977. Act No. VII of 1977.

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THE COURT-FEES ACT, 1977.

Act No. VII of 1977.

[Sanctioned by His Highness the Maharaja Sahail Bahdur per chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1 dated 8th April 1925. Notification No. 14-L[81]].

'[CHAPTER I.

PRELIMINARY.]

Short title and extent (i) This Act may be called the Court Fees Act No. VII of Samvat 1977.

(ii) It extends to the whole of the State of Jammu and

Kashmir.

- 2. The Revenue Minister or a Minister for the time being Ohief Controlling in charge of the Revenue Administration of Revenue Authority. the State shall be the "Chief Controlling Revenue Authority" for the purposes of administration of court-fees laws.
- 3. In this Act unless there is anything repugnant in the subject or context "Collector" shall mean the Governor of a Province provided that the Revenue Minister or the officer in charge of the Revenue Department for the time being with the previous sanction of the Council directs that all or any of the powers of the Collector exercisable by him under this Act shall be exercised by the the Wazir Wazarat or by any Wazir Wazarat of a particular iocality.

[CHAPTER II.

FEES IN THE HIGH COURT.]

4. No document of any of the kinds specified in the First or Second Schedules to the Court-Fees Act No. 7 of 1977 annexed, as chargeable with fees shall be filed, exhibited or recorded in, coming before it, in the exercise of its extraordinary original civil jurisdiction;

'Section 1-5 added by Act No. IX of 1994 published in Government Gazette dated 16th Baisakh 1995.

Nors.—Words "chapter 1—Preliminary" and "chapter II—Fees in High Court" are not given in the amending Act. These have been added by the Editor for consistency and facility of reference.

or in the exercise of its extraordinary original criminal jurisdiction;

or in the exercise of its ordinary original civil jurisdiction; or in the exercise of its jurisdiction as regards appeal from the judgments passed under ordinary original civil jurisdiction of the High Court;

or in the exercise of its powers as a court of appeal from

courts subject to its superintendence;

or in the exercise of its jurisdiction as a court of reference or revision;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said

schedules as the proper fee for such document.

Procedure in case of to see that proper fee is paid under this difference as to necessity chapter. If any difference arises between the said officer and any suitor or counsel as to the necessity of paying a fee or the amount thereof the question shall be referred to the said Registrar and his decision shall be final. When, however, the question is in the opinion of the Registrar one of general importance he shall refer it for the final decision of the Chief Justice or such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.]

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

able in the first or second schedule to this

Fees on documents filed etc. in Mufassil Courts or in public offices.

Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

7. The amount of fee payable under this Act in mputation of fees the suits next hereinafter mentioned shall

Computation of fees the suits next hereinafter paya le in certain suits be computed as follows:—

(i) In suits for money (including suits for damages or compensation, or arrears of maintenance of annuities, or of other sums payable periodically)—according to the amount claimed:

(ii) In suit for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and

such value shall be deemed to be ten times the amount claimed

to be payable for one year:

(iii) In suits for moveable property other than money, where the subject-matter has a market-value; where the subject-matter has a market-value according to such value at the date of presenting the plaint:

(iv) In suits-

(a) for moveable property where the subject-matter has

for moveable property no market-value, as, for instance, in the

case of documents relating to title,

(b) to enforce the right to share in any property on the ground that it is joint family property, this does not apply to a suit for partition by metes and bounds),

(c) to obtain a declaratory decree or order, where consequential relief is prayed,

for an injunction; (d) to obtain an injunction,

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

ior accounts;

for a declaratory decree

and consequential relief;

(f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at

which he values the relief sought.

(v) In suits for the possession of land, houses and garfor possession of lands, dens—according to the value of the subhouses and gardens; ject-matter; and such value shall be deemed to be—

where the subject-matter is land, and-

(a) Omitted,

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaids-eight

times the revenue so payable,

(c) where the land pays no such revenue, or has been partially exempted from such payment, is a Jagir or a Dharmarth property or is charged with any fixed payment in lieu of such revenue,

and net profits have arisen from the land during the year

next before the date of presenting the plaint-

fiftten times such net profit :

but where no such net profits have arisen therefrom—
the amount at which the Court shall estimate the
land with reference to the value of similar land

in the neighbourhood;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed the market-value of the land:

Explanation.—The word "estate", as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue:

for houses and gardens: (e) where the subject-matter is a house or garden—

(vi) In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v of this section) of the the land, house or garden in respect of

which the right is claimed:

(vii) in suits for the interest of an assignee of land revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint:

In suits for Haqi Lambardari maqaddami or a similar

right-eight times the income of the Haq or right,

(viii) In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest

was attached:
Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.

(ix) In suits against a mortgagee for the recovery of the

to redeem; property mortgaged,

and in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared

aboslute—
according to the principal money expressed to be se-

cured by the instrument of mortgage:

(x) In suits for specific performance—

for specific performance;

to foreclose;

(a) of a contract of sale—according to the amount of the consideration:

(b) of a contract of mortgage—according to the amount agreed to be secured:

(c) of a contract of lease—according to the aggregate

amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:

(d) of an award—according to the amount or value of

the property in dispute:

(xi) In the following suits between landlord and tenant:-Between landlord and tenant;

> (a) for the delivery by a tenant of the counter-part of a lease,

> (b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(cc) for the recovery of immoveable property from a tenant including a tenant holding over after the determination of a tenancy,

(d) to contest a notice of ejectment,

(e) to recover the occupancy of immoveable property from which tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount of the rent of the immoveable property to which the suit refers, payable for the year next before the date of presenting the plaint.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the Fee on memorandum of appeal against order relattime being in force for the acquisition ing to compensation. of land for public purposes shall be comput-

ed according to the difference between the amount awarded and the amount claimed by the appellant.

9. If the Court sees reason to think that the annual net Power to ascerta n

profits or the market-value of any such land, house or garden as is mentioned in section 7, paragraphs 5 and 6, have or has been wrongly estimated, the Court may,

for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

Procedure where net profits or mirket-vilue wrongly estimated.

net profits or market-

value.

10. (i) If in the result of any such investigation the Court finds that the market-value has been wrongly estimated, the Court, if estimation has been excessive, may in its discretion refund the excess paid as such fee: but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or net profits been rightly estimated.

(ii) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such

time as the Court shall fix, the suit shall be dismissed.

Procedure in suits for mesne profits or account amount decreed exceeds amount claimed.

11. In suits for mesne profits or for immovable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount which the plaintiff valued the relief

sought, the decree shall not be executed until the difference between the fee acutally paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

¹[Provided that, in suits under the Agriculturists Relief Act, 1983, the decree shall be executed to the extent of the amount of the instalments which have become due on payment of the additional court-fee, if any, which is found payable when calculated on the amount for which execution is sought].

12. (i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a Decision of questions as plaint or memorandum of appeal shall be to valuation. decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as

between the parties to the suit.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph (ii), shall apply.

Proviso to section 11 added by Act 11 of 1988 published in Government Gazette lated 4th Bhadon 1988.

13. If an appeal or plaint which has been rejected by the Lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in Order XLI Rule 23 of the same Code for a second decision by the Lower Court, the Appellate Court shall grant to the appellant a certificate, authorising him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorise the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Where an application for a review of judgment is presented on or after the ninetieth day

Refund of fee on application for review of judgment. from the date of the decree, the Court unless the delay was caused by the applicant's laches, may, in its discretion, grant him a

certificate authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

15. Where an application for a review of judgment is

Refund where Court reverses or modifies its former decision on ground of mistake. admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorising him

to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the second schedule to this Act No. I, clause (b) 'for clause (d).

No. I, clause (o) '[or clause (d)].

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might

have been produced at the original hearing.

16. O.nitted.

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in

[&]quot;Words" or clause (d)" at the end of section 15 first Para added by Act IX of 1994 published in Government Gasette dated 16th Balsakh 1995.

suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, Order II, Rule 6.

Written examination of complainants of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which the police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of [one rupee,] unless the Court thinks fit to remit such payment.

19. Nothing contained in this Act shall render the follow-Exemption of certain ing documents chargeable with any fee:

- (i) Power of attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of His Highness' army not in civil employment.
 - (ii) Omitted.
- (iii) Written statements called for by the Court after the first hearing of a suit.
 - (iv) Omitted. ²(v) Omitted.
 - ²(vi) Omitted.
 - (vii) Omitted.

(viii) Probate of a will, letters of administration, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not

exceed one thousand rupees.

(ix) Application or petition to a Collector or other officer making a settlement of land revenue or to the Revenue Minister, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

ment.
[(ix-a) Applications, appeals to the Income Tax Department in proceedings relating to assessment of Income Tax or objections thereto.]

(x) Application relating to a supply for irrigation of water belonging to Government.

18ubstituted by Notification No. 12-L/86 published in Government Gazette dated 28th Magher 1986.

2Clauses (v) and (vi) deleted and clause (ix-a) added by Act IX of 1994 published in

Government Gazette dated 16th Baisakh 1995.

(xi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

(xii) Application for service of notice of relinquishment

of land or of enhancement of rent.

(xiii) Written authority to an agent to distrain.

(xiv) First appliction (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filling of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

(xv) Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appear-

ance or otherwise.

(xvi) Petition, application, charge or information respecting any offence when presented, made or laid to or before a Police officer.

(xvi-a) Petition in a criminal case in which the Police

may arrest without warrant.

(xvi-b) Copy to which article 9 of the first schedule of this Act applies furnished to an accused person in a warrant case.

√(xvii) Petition by a prisoner, or other person in duress

or under restraint of any Court or its officers.

(xviii) Complaint of a public servant (as defined in the Ranbir Dand Bidhi) a Municipal officer, or of an official acting under Birds and Animals Game Protection Rules for breach of such rules.

(xix) Application for permission to cut timber in Gov-

ernment forests, or otherwise relating to such forests.

(xx) Application for the payment of money due by Government to the applicant.

(xxi) Omitted.

(xxii) Application for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

(xxiii) Omitted.

CHAPTER III-A.

Probates, Letters of Administration and CERTIFICATES OF ADMINISTRATION.

19-A. Where any person on applying for the probate of a will or letters of administration has esti-Relief where too high a mated the property of the deceased to be court-fee has been paid.

Banbir Penal Code.

of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Revenue Minister,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidativ

or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may-

(a) cancel the stamp on the probate or letter if such stamp has not been already cancelled;

(b) substitute another stamp for denoting the court-

fee which should have been paid thereon; and

(c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

Relief where debt due from a deceased person have been paid out of his estate.

Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which if it had been the

duces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act.

Such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceedings, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

19-C. Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

19-D. The probate of the will or the letters of adminis-

Probates declared valid as to trust-property though not covered by court-fee tration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transfer-

ring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

19-E. Where any person on applying for probate or

Provision for case where too low a court-fee has been paid on probate, etc

letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be and has in consequence paid too low a

court-fee thereon, the Revenue Minister may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or if it or they is or are produced after one year from such date of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Administrator to give low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until

the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

19-G. Where too low a court-fee has been paid on any

Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of under-p yment.

probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under

such probate or letters does not within six months after the discovery of the mistake or of any effect not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum, wanting to make up the proper court-fee.

Notice of applications administration is made to any Court other than the High Court, the Court shall cause

administration to be given to Revenue-authori- notice of the application to be given to the

ties, and procedure there. Collector.

(2) Where such an appliction as aforesaid is made to the High Court, the High Court shall cause notice of the appli-

cation to be given to the Revenue Minister.

(3) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion hat the value of the property has been under estimated, maytrequire the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the

property:

Provided that no such motion shall be made after the

expiration of six months from the date of the exhibition of the inventory required by section 98 of the Probate and Adminis-

(5) The Court when so moved as aforesaid, shall hold, or tration Act. cause to be held an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The

Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorised by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorised as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Revenue Minister of any application under sec-

tion 19-E.

(8) '[The Government] may make rules for the guidance of Collectors in the exercise of the powers conferred by subsection (3).

19-1. (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant Payment of court-fees until the petitioner has filed in the Court in respect of probates and letters of administration. a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the

Collector under section 19-H, sub-section (4).

19-J. (1) Any excess fee found to be payble on an in-Recovery of penalties, quiry held under section 19-H, sub-section (6), and any penalty or forfeiture under section 19-G may, on the certificate of the Revenue Minister be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector in any part of the State.

^{&#}x27;In sections 19-H (8), 20, 22, 23, 26, 27, 31 and 35 the words "the Government" substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

(2) The Revenue Minister may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19-E or of any court-fee under section 19-E, in excess of the full court-fee which ought to have been paid.

Sections 6 and 28 not to apply to probates or letters of administration.

19-K. Nothing in section 6 or section 28 shall apply to probates or letters of administration.

CHAPTER IV.

PROCESS-FEES.

20. The High Court shall, as soon as may be, make rules Rules as to costs of as to the following matters:—

(i) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil Courts established within the local limits of such jurisdiction;

(ii) the fees chargeable for serving and executing processes issued by the Criminal Court established within such limits in the case of offences other than offences for which Police officers may arrest without a warrant; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

All such rules, alterations and additions shall, after being confirmation and publication of rules.

Confirmation and publication and publication of rules.

Confirmation and publication and publications shall, after being confirmation and publication and publication and publication and publication and publication and publication of rules.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

22. Subject to rules to be made by the High Court and approved by '[the Government],

Number of peons in approve District and subordinate Courts. every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

and for the purposes of this section, every Court of Small

Number of p.ons in Causes shall be deemed to be subord to the Court of the District Judge.

Number of peons in every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

24. Omitted.

CHAPTER V.

OF THE MODE OF LEVYING FEES.

25. All fees referred to in section 3 or chargeable under Collection of fees by this Act shall be collected by stamps.

26. The stamps used to denote any fees chargeable under Stamps to be impressed this Act shall be impressed or adhesive or partly impressed and partly adhesive, as '[the Government] may, by notification in the Government Gazette, from time to time direct.

Rules for supply, number, renewal and to time, make rules for regulating.—

(a) the supply of stamps to be used under this Act,

fee chargeable under this Act,

(c) the renewal of damaged or spoiled stamps, and

Act. (d) the keeping accounts of all stamps used under this

All such rules shall be published in the Government Gazette, and shall thereupon have the force of law.

28. No document which ought to bear a stamp under stamping document in. this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without

¹See footnote under section 19-H.

being properly stamped, the presiding Judge or the head of the the office, as the case may be, or, in the case of the High Court, Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

29. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties,

it shall not be necessary to impose a fresh stamp.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the

stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS.

Repayment of fees a complaint or charge of an offence, other than an offence for which Police officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, paid on such application or petition.

(ii) In the case mentioned in section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

(iii) When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

(iv) All-fees ordered to be repaid under this section may

be recovered as if they were fines imposed by the Court.

32. Omitted.

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion Admission in criminal of the presiding Judge, necessary to prevent a failure of justice, nothing contained cases of documents for which proper fee has not been paid. in section 6 shall be deemed to prohibit such filing or exhibition.

34. (1) '[The Government] may from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom Sale of stamps. alone such sale is to be conducted, and the duties and remunera-

tion of such persons.

CONTROL SALES

(2) All such rules shall be published in the Government

Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

35. '[The Government] may, from time to time by notification in the Government Gazette reduce Power to reduce or reor remit in the whole or in any part of the mit fees. State, all or any of the fees mentioned in the first and

second schedules to this Act annexed,

and may in like manner cancel or vary such order.

The enactments mentioned in the schedule given below are repealed to the extent specified therein

SCHEDULE.

| Number and year. | Tit le | Extent of Re- | | |
|------------------------------------|---|---------------|--|--|
| Council Resolution No. 11 of 1901. | Dhar narth Department. Exemption from payment of Court and Process Fee | 1 m. | | |
| Council Resolution No. 8 of 190?. | and Stamp duty. | The whole. | | |
| Resolution No. 31 of 1892. | Exemption from paym nt of court-fee and Stamp duty in case of Municipalities. | l lie who | | |

See footnote under section 19-H. Enactments mentioned in the Schedule below were repealed by Act IX of 1994 published in the Gevernment Gazette dated 16th Baisakh 1995.

SCHEDULE 1.

Ad valorem fees.

Number. Proper fee. When the amount or value Six annas. of the subject-matter in dispute does not exceed five rupees. When such amount or Six annas. value exceeds five rupees, but does not exceed five hundred rupees, for every five rupees or part thereof in excess of five rupees to one hundred rupees. Twelve annas. When such amount or value exceeds one hundred rupees, but does not exceed five hundred rupees, for every ten rupees or part 11. Plaint thereof in excess of hundred rupees up to five Written statement pleading a set-off or counterhundred rupees. claim or memrandum One rupee two annas. of appeal (not otherwise When such amount or provided for in this Act) value exceeds five hundred or of cross-objection prerupees, for every ten rupees sented to any Civil or or part thereof up to one Revenue Court. thousand rupees. deven rupees eight When such amount annas. value exceeds one thousand rupees, for every one hundred rupees or part thereof in excess of one thousand rupees up to five thousand rupees. When such amount or Fifteen rupees. value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof in excess of thousand rupees up to ten

thousand rupees.

SCH DULE I-contd.

| Number. | | Proper fee. |
|--|---|---|
| | When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees up to twenty thousand rupees. | Twenty-two rupees eight annas. |
| | When such amount or value exceeds two thousand rupees, for every one thousand rupees or part thereof in excess of two next thousand rupees up to thirty thousand rupees. | Thirty rupees. |
| | When such amount of value exceeds thirty thousand rupees, for every two thousand rupees or part thereof, in excess of thirty thousand rupees up to fifty thousand rupees. When such amount or value exceeds fifty thousand rupees. | |
| | thousand rupees of fity thousand rupees of fity thousand rupees. | |
| Plaint in a suit for possession under (the Specific Relief Act, section 9). Omitted. | } { | A fee of one half the amount prescribed in the foregoing scale. |
| 4. Application for re- view of judgment, if pre- sented on or after the ninetieth day from the date of the decree. | } { | The fee leviable on the plaint or memorendum of appeal. |

SCHEDULE. I-contd.

| Number. | | Proper fee. |
|--|--|---|
| 5. Application for review of judgment, if presented before he ninetieth day from the late of the decree. | | One-half of the fee levi- able on the plaint or memorandum of appeal. |
| 6. Copy or transla- tion of a jndgment or order not being, or hav- ing the force of, a de- cree. | (a)—If the amount or value of the subjectmatter is fifty or less than fifty rupees. (b)—If such amount or value exceeds fifty rupees. | Eight annas. |
| | value of the subject- matter of the suit where in such decree or order is made is fifty or less than fifty rupees. | Eight annas. |
| 7. Copy of a decree or order having the force of a decree. | (b)—If such amount or value exceeds fifty rupees. | One rupee. |
| | When such decree or order is made by the High Court. | Four rupees. |
| 8. Copy of any docu- ment liable to stamp duty under the State Stamp Act, when left by any party to a suit or proceeding in place | chargeable on the original does not exceed eight annas. | The amount of the duty chargeable on the original. |
| of the original with- drawn. | (b)—If any other case. | Eigit aunas. |
| 9. Copy of any revenue or judicial proceeding or order not other- | | 1 Twelve annas. |

Ad valorem fees-cont d

| Number. | | Proper fee. |
|---|--|---|
| this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office. | | |
| 10. Omitted. | | , |
| 11. Probate of a will or letters of administration with or without will annexed. | If the amount or value of the property in respect of which the grant of probate or letter is made exceeds one thousand rupees, but does not exceed ten thousand rupees. When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees. When such amount or value exceeds fifty thousand rupees. When such amount or value exceeds fifty thousand rupees. Provided that when after the grant of a Certificate under the Succession Certificate Act in respect of any priper y included in an estate, a grant of probate or letters of administration is made in repect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect | Two and one-half per cent. on such amount or value. Three per cent. on such amount or value. |
| 12. Certificate under the Succession Certifi- cate Act. | of the former grant. In any case. | Two per centum on the amount or value of any debt or security speci- |

SCHEDULE 1-concld.

Ad valorem fees-concld.

| Number. | | Proper fee. |
|--|---|---|
| | | fied in the certificate under section 8 of the Act and three per centum of any amount or value on the debt or security to which the certificate is extended under section 10 of the Act. Note.—The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. |
| 13. Application to the High Court for revisional juridiction | When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees. | Two rupees. |
| under section 115 of the Code of Civil Procedure. | When such amount or value exceeds twenty-five rupees. | The fee leviable on a memorandum of appeal. |
| | | Two rupees. |
| under the Agriculturists Relief Act to the High Court for revisional juris- diction under section 115 of the Civil Procedure Code. | In all cases. | |
| 14. Omitted. | | |
| 15. Omitted. | | |

Added by Notification No. 10-L/86 published in Government Gazette dated 21st Magher 1986,

SCHEDULE 1.

1 Pable of rates of ad valorem fees leviable on the institution of rates.

| hen the mount or value of the subject-matter xceeds. | But does not exceed. | Proper fee. | When the amount or value of the subject-matter exceeds. | But does not exceed. | Proper fee. |
|--|-------------------------|---------------|---|-------------------------|-------------|
| Rs. | Rs. | Rs. A. P. | Rs. | Rs. | Rs. A. P. |
| | 5 | 0 6 0 | 95 | 100 | 7 8 0 |
| 5 | 10 | 0 12 0 | 100 | 110 | 8 4 0 |
| 10 | 15 | 1 2 0 | 110 | 120 | 9 0 0 |
| 15 | 20 | 1 8 0 | 120 | 130 | 9 12 0 |
| 20 | 25 | 1 14 0 | 130 | 140 | 10 8 0 |
| 25 | 30 | 2 4 0 | 140 | 150 | 11 4 0 |
| 30 | 35 | 2 10 0 | 150 | 160 | 12 0 0 |
| 35 | 40 | 3 0 0 | 160 | 170 | 12 12 0 |
| 40 | 45 | 3 6 0 | 170 | 180 | 13 8 0 |
| 45 | 50 | 3 12 0 | 180 | 190 | 14 4 0 |
| 50 | 55 | . 4 2 0 | 190 | 200 | 15 0 0 |
| 55 | 60 | 4 8 0 | 200 | 210 | 15 12 0 |
| 60 | 65 | 4 14 0 | 210 | 220 | 16 8 0 |
| 65 | 70 | 5 4 0 | 220 | 230 | 17 4 0 |
| 70 | 75 | 5 10 0 | 230 | 240 | 18 0 0 |
| 75 | 80 | 6 0 0 | 240 | 250 | 18 12 0 |
| 80 | 85 | 6 6 0 | 250 | 260 | 19 8 (|
| 85 | 90 | 6 12 (| 260 | 270 | 20 4 0 |
| 90 | 95 | 7 2 0 | 270 | 280 | 21 0 0 |

Table of rates of ad valorem fees substituted by Notification No. 12eL/86 published in Government Gazette dated 28th Magher, 1986.

| When the smount of the subject-matter exceeds. | | Proper | fee. | | When the amount or value of the subject-matter exceeds. | | Proper | fee | . |
|--|-----|------------|------|----|---|-----|--------|-----|----------|
| Rs. | Rs. | Rs. | Α. | Р. | Rs. | Rs. | Rs. | | P |
| 280 | 290 | 21 | 12 | 0 | 470 | 480 | 36 | 0 | 0 |
| 290 | 300 | 22 | 8 | 0 | 480 | 490 | 36 | 12 | 0 |
| 300 | 310 | 23 | 4 | 0 | 490 | 500 | 37 | 8 | 0 |
| 310 | 320 | 24 | 0 | 0 | 500 | 510 | 57 | 6 | 0 |
| 320 | 330 | 24 | 12 | 0 | 510 | 520 | 58 | 8 | 0 |
| 330 | 340 | 25 | 8 | 0 | 520 | 530 | 59 1 | 0 | 0 |
| 340 | 350 | 26 | 4 | 0 | 530 | 540 | 60 1 | 2 | 0 |
| 35 0 | 360 | 27 | 0 | 0 | 540 | 550 | 61 1 | 4 | 0 |
| 360 | 370 | 27 | 12 | 0 | 550 | 560 | 63 | 0 | 0 |
| 370 | 380 | 28 | 8 | 0 | 560 | 570 | 64 | 2 | 0 |
| 380 | 390 | 29 | 4 | 0 | 570 | 580 | 65 | 4 | 0 |
| 39 0 | 400 | 30 | 0 | 0 | 580 | 590 | 66 | 6 | 0 |
| 400 | 410 | 30 | 12 | 0 | 590 | 600 | 67 | 8 | 0 |
| 410 | 420 | 31 | 8 | 0 | 600 | 610 | 68 10 | 0 | 0 |
| 420 | 430 | 32 | 4 | 0 | 610 | 620 | 69 1 | 2 | 0 |
| 43 0 | 440 | 33 | 0 | 0 | 6 20 | 630 | 70 1 | 4 | 0 |
| 440 | 450 | 33 | 12 | 0 | 630 | 640 | 72 | 0 | 0 |
| 450 | 460 | 34 | 8 | 0 | 640 | 650 | 73 | 2 | 0 |
| 460 | 470 | 3 5 | 4 | 0 | 650 | 660 | 74 | 4 | 0 |

sch. I.]

| f••. | Proper | But does not exceed. | When the amount or value of the subject-matter exceeds. | Proper fee. | But does not exceed. | When the amount or value of the subject-matter exceeds. |
|------|--------|----------------------------|---|----------------|----------------------------|---|
| A. P | Rs. | Rs. | Rs. | Rs. A. P. | Rs. | Rs. |
| 12 (| 96 | 860 | 850 | 75 6 0 | 670 | 660 |
| 14 (| 97 | 870 | 860 | 76 8 0 | 680 | 670 |
| 0 (| 99 | 880 | 870 | 77 10 0 | 690 | 680 |
| 2 (| 100 | 890 | 880 | 78 12 0 | 700 | 690 |
| 4 (| 101 | 900 | 890 | 79 14 0 | 710 | 700 |
| 6 (| 102 | 910 | 900 | 81 0 0 | 720 | 710 |
| 8 (| 103 | 920 | 910 | 82 2 0 | 730 | 720 |
| 10 | 104 | 930 | 920 | 33 4 0 | 740 | 730 |
| 12 | 105 | 940 | 930 | 84 6 0 | 750 | 740 |
| 14 | 106 | 950 | 940 | 85 8 0 | 760 | 750 |
| 0 | 108 | 960 | 950 | 86 10 0 | 770 | 760 |
| 2 | 109 | 970 | 960 | 87 12 0 | 780 | 770 |
| 4 | 110 | 980 | 970 | 88 14 0 | 790 | 780 |
| 6 | 111 | 990 | 980 | 90 0 0 | 800 | 790 |
| 8 | 112 | 1,000 | 990 | 91 2 0 | 810 | 800 |
| 0 | 120 | 1,100 | 1,000 | 92 4 0 | 820 | 810 |
| 8 | 127 | 1,200 | 1,100 | 93 6 0 | 830 | 820 |
| 0 | 135 | 1,300 | 1,200 | 94 8 0 | 840 | 830 |
| 8 | 142 | 1,400 | 1,300 | 95 10 0 | 850 | 840 |

| When the amount or value of the subject-matter exceeds. | But does not exceed. | Proper fee. | | When the amount or value of the subject-matter exceeds. | But does not exceed. | Proper | fee | • | |
|---|-------------------------|-------------|----|---|----------------------------|--------|-----|----|----|
| Rs. | Rs. | Rs. | Δ. | P. | Rs. | Rs. | Rs. | Α. | Р. |
| 1,400 | 1,500 | 150 | 0 | 0 | 3,300 | 3,400 | 292 | 8 | 0 |
| 1,500 | 1,600 | 157 | 8 | 0 | 3,400 | 3,500 | 300 | 0 | 0 |
| 1,600 | 1,700 | 165 | 0 | 0 | 3,500 | 3,600 | 307 | 8 | 0 |
| 1,700 | 1,800 | 172 | 8 | 0 | 3,600 | 3,700 | 315 | 0 | 0 |
| 1,800 | 1,900 | 180 | 0 | 0 | 3,700 | 3,800 | 322 | 8 | 0 |
| 1,900 | 2,000 | 187 | 8 | 0 | 3,800 | 3,900 | 330 | 0 | 0 |
| 2,000 | 2,100 | 195 | 0 | 0 | 3,900 | 4,000 | 337 | 8 | 0 |
| 2,100 | 2,200 | 202 | 8 | 0 | 4,000 | 4,100 | 345 | 0 | 0 |
| 2,200 | 2,300 | 210 | 0 | 0 | 4,100 | 4,200 | 352 | 8 | 0 |
| 2,300 | 2,400 | 217 | 8 | 0 | 4,200 | 4,300 | 360 | 0 | 0 |
| 2,400 | 2,500 | 225 | 0 | 0 | 4,300 | 4,400 | 367 | 8 | 0 |
| 2,500 | 2,600 | 232 | 8 | 0 | 4,400 | 4,500 | 375 | 0 | 0 |
| 2,600 | 2,700 | 240 | 0 | 0 | 4,500 | 4,600 | 382 | 8 | 0 |
| 2,700 | 2,800 | 247 | 0 | 0 | 4,600 | 4,700 | 390 | 0 | 0 |
| 2,800 | 2,900 | 255 | 0 | 0 | 4,700 | 4,800 | 397 | 8 | 0 |
| 2,900 | 3,000 | 262 | 8 | 0 | 4,800 | 4,900 | 405 | 0 | 0 |
| 3,000 | 3,100 | 270 | 0 | 0 | 4,900 | 5,000 | 412 | 8 | 0 |
| 3,100 | 3,200 | 277 | 8 | 0 | 5,000 | 5,250 | 427 | 8 | 0 |
| 3,200 | 3,300 | 285 | 0 | 0 | 5,250 | 5,500 | 442 | 8 | 0 |

SCH. I.]

| When the amount or value of the subject-matter exceeds. | But does not exceed. | Proper | fee. | | When the amount or value of the subject matter exceeds. | But does not exceed. | Proper | fee | |
|---|-------------------------|-------------|------|----|---|-------------------------|--------|-----|---|
| Rs. | Rs. | Rs | Α. | P. | Rs. | Rs. | Rs. | ۸. | P |
| 5,500 | 5,750 | 457 | 8 | 0 | 10,500 | 11,000 | 757 | 8 | 0 |
| 5,750 | 6,000 | 472 | 8 | 0 | 11,000 | 11,500 | 780 | 0 | 0 |
| 6,000 | 6,250 | 487 | 8 | 0 | 11,500 | 12,000 | 802 | 8 | 0 |
| 6,250 | 6,500 | 502 | 8 | 0 | 12,000 | 12,500 | 825 | 0 | C |
| 6.500 | 6,750 | 517 | 8 | 0 | 12,500 | 13,000 | 847 | 8 | 0 |
| 6,750 | 7,000 | 532 | 8 | 0 | 13,000 | 13,500 | 870 | 0 | 0 |
| 7,000 | 7,250 | 547 | 8 | 0 | 13,500 | 14,000 | 892 | 8 | 0 |
| 7,250 | 7,500 | 562 | 8 | () | 14,000 | 14,500 | 915 | 0 | 0 |
| 7,500 | 7,750 | 57 7 | 8 | 0 | 14,500 | 15,000 | 937 | 8 | 0 |
| 7,750 | 8,000 | 592 | 8 | 0 | 15,000 | 15,500 | 960 | 0 | 0 |
| 8,000 | 8,250 | 607 | 8 | 0 | 15,500 | 16,000 | 982 | 8 | 0 |
| 8,250 | 8,500 | 622 | 8 | 0 | 16,000 | 16,500 | 1,005 | 0 | 0 |
| 8,500 | 8,750 | 637 | 8 | 0 | 16,500 | 17,000 | 1,027 | 8 | 0 |
| 8,750 | 9,000 | 652 | 8 | 0 | 17,000 | 17,500 | 1,050 | 0 | 0 |
| 9,000 | 9,250 | 667 | 8 | 0 | 17,500 | 18,000 | 1,072 | 8 | 0 |
| 9,250 | 9,500 | 682 | 8 | 0 | 18,000 | 18.500 | 1,095 | 0 | 0 |
| 9,500 | 9,750 | 697 | 8 | 0 | 18,500 | 19,000 | 1,117 | 8 | 0 |
| 9,750 | 10,000 | 712 | 8 | 0 | 19,000 | 19,500 | 1,140 | 0 | 0 |
| 10,000 | 10,500 | 735 | 0 | 0 | 19,500 | 20,000 | 1,162 | 8 | 0 |

| When the amount or value of the subject-matter exceeds. | But does not exceed. | Proper | fee | | When the amount or value of the subject matter exceeds. | But does not exceed. | Proper | fe | в. |
|---|-------------------------|--------|-----|----|---|-------------------------|--------|----|----|
| Rs. | Rs. | Rs. | ۸. | Р. | Rs. | Rs. | Rs. | Δ. | P. |
| 20,000 | 21,000 | 1,192 | 8 | 0 | 48,000 | 50,000 | 1,762 | 8 | 0 |
| 21,000 | 22,000 | 1,222 | 8 | 0 | 50,000 | 55,000 | 1,792 | 8 | 0 |
| 22,000 | 23,000 | 1,252 | 8 | 0 | 55,000 | 60,000 | 1,822 | 8 | 0 |
| 23,000 | 24,000 | 1,282 | 8 | 0 | 60,000 | 65,000 | 1,852 | 8 | 0 |
| 24,000 | 25,000 | 1,312 | 8 | 0 | 65,000 | 70,000 | 1,882 | 8 | 0 |
| 25,000 | 26,000 | 1,342 | 8 | 0 | 70,000 | 75,000 | 1,912 | 8 | 0 |
| 26,000 | 27,000 | 1,372 | 8 | 0 | 75,000 | 80,000 | 1,942 | 8 | 0 |
| 27,000 | 28,000 | 1,402 | 8 | 0 | 80,000 | 8 5,00 0 | 1,972 | 8 | 0 |
| 28,000 | 29,000 | 1,432 | 8 | 0 | 85,000 | 90,000 | 2,002 | 8 | 0 |
| 29,000 | 30,000 | 1,462 | 8 | 0 | 90,000 | 95,000 | 9,032 | 8 | 0 |
| 30,003 | 32,000 | 1,492 | 8 | 0 | 95,000 | 1,00,000 | 2,062 | 8 | 0 |
| 3 2,000 | 34,000 | 1.522 | 8 | 0 | 1,00,000 | 1,05,000 | 2,092 | 8 | 0 |
| 34,000 | 36,000 | 1,552 | 8 | 0 | 1,05,000 | 1,10,000 | 2,122 | 8 | 0 |
| 36,000 | 38,000 | 1,582 | 8 | 0 | 1,10,000 | 1,15,000 | 2,152 | .8 | 0 |
| 38,000 | 40,000 | 1,612 | 8 | 0 | 1,15,000 | 1,20,000 | 2,182 | 8 | C |
| 40,000 | 42,000 | 1,642 | 8 | 0 | 1,20,000 | 1,25,000 | 2,212 | 8 | 0 |
| 42,000 | 44,000 | 1,672 | 8 | 0 | 1,25,000 | 1,30,000 | 2,242 | 8 | 0 |
| 44,000 | 46,000 | 1,702 | 8 | 0 | 1,30,000 | 1,35,900 | 2,272 | 8 | 0 |
| 46,000 | 48,000 | 1,732 | 8 | 0 | 1,35,000 | 1,40,000 | 2,302 | 8 | (* |

| When the amount or value of the subjectmatter exceeds. | But does not exceed | Proper fe | e. | | When the amount or value of the subject-matter exceeds. | But does | Proper | fee | |
|--|------------------------|-----------|----|----|---|-----------|--------|-----|----|
| Rs. | Rs. | Re. A | | P. | Rs. | Rs. | Rs. | A. | P. |
| 1,40,000 | 1,45,000 | 2,332 | 8 | 0 | 2,35,000 | 2,40,000 | 2,902 | 8 | 0 |
| 1,45,000 | 1,50,000 | 2,362 | 8 | 0 | 2,40,000 | 2,45,000 | 2,932 | 8 | 0 |
| 1,50,000 | 1,55,000 | 2,392 | 8 | ō | 2,45,000 | 2,50,000 | 2,962 | 8 | 0 |
| 1,55,000 | 1,60,000 | 2,422 | 8 | 0 | 2,50,000 | (2,55,000 | 2,992 | 8 | 0 |
| 1,60,000 | 1,65,000 | 2,452 | 8 | n | 2,55,000 | 2,60,000 | 3,022 | 8 | 0 |
| 1,65,000 | 1,70,000 | 2,482 | 8 | 0 | 2,60,000 | 2,65,000 | 3,052 | 8 | 0 |
| 1,70,000 | 1,75,000 | 2,512 | 8 | 0 | 2,65,000 | 2,70,000 | 3,032 | 8 | 0 |
| 1,75,000 | 1,80,000 | 2,542 | 8 | 0 | 2,70,000 | 2,75,000 | 3,112 | 8 | 0 |
| 1,80,000 | 1,85,000 | 2,572 | 8 | 0 | 2,75,000 | 2,80,000 | 3,142 | 8 | 0 |
| 1,85,000 | 1,90,000 | 2,602 | 8 | 0 | 2,80,000 | 2,85,000 | 3,172 | 8 | 0 |
| 1,90,000 | 1,95,000 | 2,632 | 8 | 0 | 2,85,000 | 2,90,000 | 3,202 | 8 | 0 |
| 1,95,000 | 2,00,000 | 2,662 | 8 | 0 | 2,90,000 | 2,95,000 | 3,232 | 8 | 0 |
| 2,00,000 | 2,05,000 | 2,692 | 8 | 0 | 2,95,000 | 3,00,000 | 3,262 | 8 | 0 |
| 2,05,000 | 2,10,000 | 2,722 | 8 | 0 | 3,00,000 | 3,05,000 | 3,292 | 8 | 0 |
| 2,10,000 | 2,15,000 | 2,752 | 8 | 0 | 3,05 000 | 3,10,000 | 3.322 | 8 | 0 |
| 2,15,000 | 2,20,000 | 2,782 | 8 | 0 | 3,10,000 | 3,15,000 | 3,352 | 8 | 0 |
| 2,20,000 | 2,25,000 | 2,812 | 8 | 0 | 3,15,000 | 3,20,000 | 3,382 | 8 | 0 |
| 2,25,000 | 2,30,000 | 2,842 | 8 | 0 | 3,20,009 | 3,25,000 | 3,412 | 8 | 0 |
| 2,30,000 | 2,35,000 | 2,872 | 8 | 0 | 3,25,000 | 3,30,000 | 3,442 | 8 | 0 |

Ad valorem fees .- contd.

| When the amount or value of the subject-matter exceeds. | But does not exceed. | 1 - amount of D | | But does not exceed. | Proper | Proper fee. | | | |
|---|-------------------------|-----------------|----|-------------------------|----------|-------------|-------|----|----|
| Rs. | Rs. | Rs. | Δ. | Р. | Rs. | Rs. | Rs. | ۸. | P, |
| 3,30,000 | 7,35,000 | 3,472 | 8 | 0 | 3,65,000 | 3,70,000 | 3,682 | 8 | 0 |
| 3,35,000 | 3,40,000 | 3,502 | 8 | 0 | 3,70,000 | 3,75,000 | 3,712 | 8 | 0 |
| 3,40,000 | 3,45.000 | 3,532 | 8 | 0 | 3,75,000 | 3,80,000 | 3,742 | 8 | 0 |
| 3,45,000 | 3,50,000 | 3,562 | 8 | 0 | 3,80,000 | 3,85,000 | 3,772 | 8 | 0 |
| 3,50,000 | 3,55,00) | 3,592 | 8 | 0 | 3,85,000 | 3,90,000 | 3,802 | 8 | 0 |
| 3,55,000 | 3,60,000 | 3,622 | 8 | 0 | 3,90,000 | 3,95,000 | 3.832 | 8 | 0 |
| 3,60,000 | 3,65,000 | 3,652 | 8 | 0 | 3,95,000 | 4,00,000 | 3,862 | 8 | 0 |

And when the amount or value of the subject-matter exceeds Rs. 4,00,000 the proper fee leviable shall be Rs. 3,862 annas eight plus Rs. 30 for each five thousand rupees or part thereof in excess of Rs. 4,00,000.

SCHEDULE 11.

Fixed Fees.

| | Number. | | | Proper fee. |
|----|------------------------|----|---|---------------------------|
| 1. | Application peti-tion. | or | (a).—When presented to [any Sub-Registrar or] any officer of the Customs or Excise Department or to any Magistrate by any person having deal- ings with the Govern- ment, and when the subject-matter of such application re- lates exclusively to those dealings; | |
| | | | or when presented to any officer of land- revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject- matter of the applica- tion or petition relates exclusively to such engagement; | ² [Two annas.] |
| | | | or when presented to any Municipal Com- missioner under any Act for the time being in force for the con- servancy or improve- ment of any place, if the application or petition relates solely to such conservancy or improvement; | |
| | | | or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any | |

^{1990.}Substituted by Notification No. 12L-86 published in Government Gasette dated 11th Phagan
Magher 1986.

Fixed Fees .- contd.

| Number. | | Proper fee. |
|------------------------------------|--|---------------|
| 1. Application or petition.—contd. | Court of Small Causes or to a Collector or other officers of reve- nue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees; or when presented to any Civil, Criminal or Revenue Court, 2[or Registration office]for the purpose of obtain- ing a copy or trans- lation of any judg- ment, decree or order passed by such Court, or of any other docu- ment on record in such Court or Office. | ¹[Two annas.] |
| | (b).—When containing a complaint or charge of any offence other than an offence for which Police officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court; or when presented to a Civil, Criminal or Revenue Court 2 [or to a Registrar under the Registration Act] or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Col- | ¹[One rupee]. |

^{*}Substituted by Notification No. 12-L/86 published in the Government Gazette dated **Sth Magher 1996.
*Added by Act VIII of 1990 published in the Government Gazette dated 11th Phagan 1990.

Fixed Fees .- contd.

| | Number. | | Proper fee. |
|----|---------------------------------|--|---------------------|
| 1. | Application or petition.—contd. | Magistrate or the head of any Department other than a Minister in his executive capacity, and not other wise provided for by this Act. or to deposit in court revenue or rent; or for determination by a court of the amount of ompensation to be paid by landlord to his tenant. (c).—When presented to a Minister in his executive capacity and not | Two rupees. |
| | | otherwise provided for by this Act. 1[(d).—When presented to the High Court— | |
| | | (i) Under the Companies Act, 1977, for sinding up a Company. | One hundred rupees. |
| | | (ii) Under the same Act for taking some other Judicial action. | Five rupees. |
| | | (iii) In all other cases not otherwise provided for by this Act. | Two rupees.] |
| | | [(e).—When presented or addressed to His Highness and not otherwise provided for by this Act. | Two rupees.] |

Olause (d) (as amended wide Notification No. 2, deted 21st July, 1921) substituted wide Notification No. 12 L/86 published in the Government Gazette dated 28th Magher 1986. Olause (e) also added by the same Notification.

Fixed fees -contd.

Number. Proper fee. ¹[Exemptions.— 1. Petitions from widows, orphans and Military Pensioners when submitted to His Highness the Maharaja Bahadur to Council or Ministers. 2. Applications for employment in Government service when sent in response to Government advertisements. 3. Petitions from pensioners with regard to their pensions. Applications Civil and Military officers regarding questions arising out of the service such as applications for grant of increment, transfer, leave etc. 5. Applications for scholarships. 6. Application grant-in-aid to schools, Maktabs and Pathshalas. 7. Applications grant of loans from Provident Fund or for house building or purchase of motor-car. 8. Petitions from widows and orphans for grant of compassionate allowance. 9. Applications for enquiries received from contractors and licensees arising out of the operation of such contracts and licenses but not applications for any concessions or remissions.

ment Gazette dated 23rd 'Katik 1991.

SCHEDULE II-contd.

Fixed Fees - contd.

| Number. | | Proper fee. |
|---|---|--|
| 10. Applications from the public or public bodies for repairs to drains, roads. ghats, bathing places or stand pipes or for provision of light and water whether in towns or in rural areas. 11. Applications from Musidars or Mukarraridars for payment or settlement of their pending claims.] 1[12. Applications for | | |
| 1-A. Application to any Civil Court that records may be called for from another Court. | When the Court grants the application and is of opinion that the transmission involves the use of post. | Twelve annas, in addition to any fee leviable on the application under clauses (a) and (b) of Art. I to this schedule. |
| 2. Application for leave to sue as a pauper. | | Eight annas. |
| 3. Application for leave to appeal as pauper. | (a)—When presented to a Lower Court. | One rupee. |
| PPo | (b)—When presented to a District court or the High Court or the Revenue Minister. | Two rupees. |
| 4. Omitted. | (c)—When presented to His Highness the Maharaja Bahadur. | Three rupees. |
| 5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy. | } | ² [One rupee]. |

¹Exemption 12| added wide Notification No. 6-L/1992 Council Order No. 72 of 1986 published in the Government Gazette dated 30th Phagan 1992.

²Substituted wide Notification No. 12-L/86 published in the Government Gazette dated 28th Magher 1986;

SCHEDULE II-contd.

Fixed Fees-contd.

| Number. | | Proper fee. |
|---|--|-----------------------------|
| 6. Bail-bond or other instrument of obligation given in the absence of any other provision in this Act. | 1/ | ¹[One rupee]. |
| 7. Omitted. | | |
| 8. Omitted. | | |
| 9. Omitted. | | |
| 10. Mukhtarnama or Wakalatnama ² [or any paper signed by an | When presented for the conduct of any one case— | |
| Advocate signifying or intimating that he is retained for a party]. | (a)—to His Highness the Maharaja Bahadur, the High Court or a Minister. | Two rupees. |
| | (b)—to the District or Sessions Court or the Governor. | One rupee. |
| | (c)—to any other Civil, Criminal or Revenue Court of Revenue Office. | ³ [One rupee]. |
| 11. Memorandum of appeal when the appeal is | Bahadur or the High Court, or a | ³ [Four rupees.] |
| not from a decree or an order having the force of decree, and is present- | Minister. (b)—to the District or Sessions Court or to | One rupee. |
| ed— | the Governor. (e)—to any other Civil or Revenue Court or Revenue Office. | ³ [One rupee.] |
| 12. Omisted. | | |

89-L/89 published in

Government Gazette dated 8th Poh 1989 for "eight annas" in Article 6.

In Article 10 words in brackets added vide Act XXI of 1989.

Substituted by Notification No. 12-L/86 published in Government Gazette dated 28th Magher 1986.

Fixed fees .- contd.

| Aumber. | | Proper fee |
|--|-------|----------------|
| 13. Omitted. | | |
| 14. Omitted. | | |
| 15. Omitted. | | |
| 16. Cmitted. | | |
| 17. Plaint or memorandum of appeal in each of the following suits: | | |
| a summary decision or order of a Civil Court. | | Ten rupees. |
| (b) To alter or set aside a summary decision or order of a Reve- nue Court, not otherwise provided for. | | ¹[Two rupees.] |
| ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates; | | |
| iii. to obtain a dec- latory decree where no consequential relief is prayed; | ••••• | Ten rupees. |
| iv. to set aside an award. | | |
| v. to set aside an adoption. | | |
| where it is not possible to estimate at a money- | | |

SCHEDULE II.-coneld.

Fixed fees .- concld.

| Number. | | Proper fee. |
|---|-------|----------------|
| value the subject-matter in dispute, and which is not otherwise provided for by this Act. vii. an appeal from a oreliminary decree passed under rules 13, 15, 16 or 18 (b) of order XX of the Code of Civil Procedure. | | Ten rupees. |
| 18. Application ander Schedule II Para. 7, of the Code of Civil procedure. 19. Agreement in priting stating a question for the opinion of the Court under the | ••••• | Ten rupees |
| 20. Omitted. | | |
| 21. Plaint or memo- andum of appeal in a suit for restitution of conjugal rights or custody of a wife. | | Five rupees. |
| 122. Plaint or memo- andum of appeal in a uit by a reversioner ander the Customary law for a declaration in espect of an alienation of ancestral land. | | Twenty rupees. |

Article 22 added vide Notification No. 12-L/86 published in Government Gasette dated 28th Magher 1986.

SCHEDULE III.

(See section 191.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY).

Reprobate of the Will of the property and oredits of

, (or admission of ,) deceased.

I

Solemnly affirm make oath.

and say that I am the executor (or one of the executors or one of the next kin)of , deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the above naned deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

- 2. I further say that I have also truly set torth in Annexure B all the items I am by law allowed to deduct.
- 3. I further say that the said assets. exclusive only of such last mentioned items, but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased, are under the value of

ANNEXURE A.

R. A. p.

VALUATION OF THE MOVEABLE ATD IMMOVEABLE PROPETY OF , DECEASED.

Cash in the house and at the banks, house-hold goods, wearing-apparel, books, plate, jewels, etc.

(State estimated value according to best of Executor's or Administrator's belief)

Property in Government securities transferable at the Public Debt Office.

(State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.)

Immoveable property consisting of

(State description giving, in the case of houses, the assessed value, if any, and the number of years, assessment, the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.)

Leasehold property

(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)

Y I TU.

| Property in public companies, | Rs. | A. 1 |
|---|----------|------|
| (State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.) | ne of | |
| Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes an other securities for money. | er d | |
| (State the amount of the whole; also the interest separately, calculating it to the time of making the application.) | t- | |
| Book debts | | |
| (Other than bad) | | |
| Stock in trade | | |
| (State the estimated value, if any.) | . | |
| Other property not comprised under the foregoing heads | | 1 |
| (Etate the estimated value, if any.) | | |
| Total | | - - |
| Deduct amount shown in Annexure B not subject to duty | | - |
| NET TOTAL | | |

ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

| | Rs. | A. P. |
|---|-----|-------|
| Amount of debts due and owing from the deceased, payable by law out of the estate | | |
| Amount of funeral expenses | | |
| Amout of mortgage incumbrances | | |
| Property held in trust not beneficially or with general power to confer a beneficial interest | | |
| Other property not subject to duty | | |
| Total | | |

THE CATTLE-TRESPASS ACT, 1977 Act No. VIII of 1977.

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SCHEDULE-Omitted.

THE CATTLE-TRESPASS ACT, 1977.

Act VIII of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 1 th September, 1920, and State Council Resolution No. 1, dated 8th April, 1925. (Notific tion No. 14-L/81).]

An Act to consolidate and amend the Law relating to Trespasses by Cattle.

WHEREAS it is expedient to consolidate and amend the the Law relating to trespasses by cattle; It is hereby enacted as follows:-Preamble

CHAPTER I.

PRELIMINARY.

11. (1) Omitted. (2) The Act extends to the whole State, except such towns or local areas as ²[His Highness' Government, Jammu and Kashmir], by notifica-Extent. tion in the Jammu and Kashmir Kashmir Government Gazette, may from time to time exclude from its operation.

2. All pounds established, pound-keepers appointed and villages determined under the State Coun-Savings. cil Circular No. 30 of 1889 (relating to Trespasses by Cattle), shall be deemed to be respectively estab-

lished, appointed and determined under this Act.

3. In this Act: "Officer of Police" includes also village watchmen and Interpretration clause. 3[in any local area with respect to which a Notification under section 33 is for the time being in force, also any employee of the local authority referred to in that section.]

Short title and commencement are given and regulated by Act IV of 1977 For the expression "His Highness" the expression "His Highness in Council" was substituted throughout the Act vide Notification 22-L/83. This expression however was further substituted by the expression "His Highness' Government Jammu and Kashmir" throughout the Act vide Notification No. 11-L/84 published in Government Gazette 9th Magher 1984.

*Added wide Notification 22-L/83 published in Government Gasette dated 19th

Magh 1983,

"Cattle" includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, kids.

"["Local authority" means anybody of persons for the time being invested by Law with the control and administra-

tion of any matters within a specified local area, and]

"["Local fund" means any fund under the control or management of a local authority.]

CHAPTER II.

Pounds and Pound-keepers.

4. Pounds shall be established at such places as the Superintendent of Police of a Province, Establishment of pounds. subject to the general control of His Highness' Government Jammu and Kashmir from time to time directs.

The village by which every pound is to be used shall be determined by the Superintendent of Police of a Province.

5. The pounds shall be under the control of the Superintendent of Police of a Province; and he Control of pounds. shall fix, and may from time to time alter, Rates of charge for the rates of charge for feeding and feeding impounded cattle. watering impounded cattle.

6. The Superintendent of Police of a Province shall also appoint for each pound a pound-keeper. Appointment of pound-

keeperg.

Every pound-keeper appointed by the Superintendent of Police of a Province may be suspended or Suspension or removal of pound-keepers. removed by him.

Any pound-keeper may hold simultaneously any other

office under Government. Pound-keepers may hold other offices.

Every pound-keeper shall be deemed a public servant within the meaning of the Ranbir Dand Pound-keepers to be Bidhi.

Duties of Pound-keepers.

Every pound-keeper shall keep such registers and furnish such returns as His Highness' Government Jammu and Kashmir from time To keep registers and furnish returns. to time direct.

'Added vide Notification 22-L/83 published in Government Gagette dated 19th March, 1983.

Ranbir Penal Code

When cattle are brought to a pound, the poundkeeper shall enter in his register-To register seizures.

(a) the number and description of the animals,

(b) the day and hour on and at which they were so brought,

(c) the name and residence of the seizer, and

(d) the name and residence of the owner, if known and

shall give the seizer or his agent a copy of the entry.

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as To take charge of and hereinafter directed. feed cattle.

CHAPTER III.

IMPOUNDING CATTLE.

10. To cultivator or occupier of any Cattle damaging land. land,

or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce, or

any part thereof,

may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon, and send them or cause them to be sent within twenty four hours to the pound established for the village in which the land is situate.

All officers of Police shall, when required, aid in preventing (a) resistance to such seizures, and (b) Police to aid selzures. rescues from persons making such seizures.

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, em-Cattle damaging public bankments and the like, and officers of roads, canals and Police, may seize, or cause to be seized, embankments. any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments, and the like, or the sides or slopes of such roads, canals, drainage-works or embankments, or found straying thereon,

and shall send them or cause them to be sent within

twenty-four hours to the nearest pound.

12. For every head of cattle impounded as aforesaid, Fines for cattle im- the pound-keeper shall levy a fine accordpounded.

ing to the following scale:-

| | | | | Rs. | a. | p. |
|------------|----------|------------------|------|-----|----|----|
| Elephant | | •• | | 2 | 0 | 0 |
| Camel | | •• | | 1 | 0 | 0 |
| Buffalo, l | norse, m | are, gelding or | pony | 0 | 8 | 0 |
| Bull, bull | lock, co | w, heifer or ass | 3 | 0 | 4 | 0 |
| Pig, shee | p, goat, | ram or ewe | | 0 | 2 | 0 |

Note.—Calf, lamb, kid, colt or filly under six months shall be charged at half rates.

Provided that when it appears to His Highness' Government Jammu and Kashmir, from the report of Superintendent of Police of a Province, or on the representation of a local authority, that, in any local area subject to the jurisdiction or control of such Superintendent of Police or authority, cattle are habitaully allowed to trespass on land and damage crops or other produce theron, His Highness' Government Jammu and Kashmir may, by notification in the Jammu and Kasmir Government Gazette, direct that, for every head of cattle of any kind specified there in which may be seized within such local area and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the foregoing scale as may be prescribed in the notification.

All fines so levied shall be sent to the Superintendent of List of fines charges for feeding. and Police of a Province through such officer as '[the Government] from time to time

direct.

A list of the fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place

on or near to every pound.

[The Government] may at any time, by notification in the Jammu and Kashmir Government Gazette, cancel or vary a notification under the proviso to the first paragraph of this section.

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the poundkeeper shall deliver them to him on pay-Procedure when owner ment of the fines and charges incurred in claims the cattle and pays fines and charges. respect of such cattle.

In section 12 for the words "His Highness" the words "the Government" substituted

wide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper. 14. If the cattle be not claimed within seven days from

the date of their being impounded, the fact shall be reported to a Magistrate whom Procedure if outtle be the Magistrate of the District appoints in not claimed within a this behalf.

Such Magistrate shall thereupon stick up in a conspicuous

part of his office a notice stating-

(a) the number and description of the cattle,

(b) the place where they were seized, (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest

to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said Magistrate, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time directs:

Provided that, if any such cattle are, in the opinion of the Magistrate, not likely to fetch a fair price if sold as aforesaid they may be disposed of in such mannaer as he thinks fit.

Delivery to owner disputing legality of seisure, but making deposit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under section 20, then upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, Proceedure when owner refuses or omits to pay the cattle, or as many of them as may be the fines and expenses. necessary, shall be sold by public auction by such Magistrate, at such place and time and subject to such

conditions, as are referred to in section 14.

The fines leviable and the expenses of feeding and watering together with the expenses of sale, if Deduction of fines and any, shall be deducted from the proceeds expenses. of the sale.

The remaining cattle and the balance of the purchasemoney, if any, shall be delivered to the Delivery of unsold owner or his agent, together with cattle and balance of proceeds. account showing-

(a) the number of cattle seized,

(b) the time during which they have been impounded,

(c) the amount of fines and charges incurred,

(d) the number of cattle sold, (e) the proceeds of sale, and

(f) the manner in which those proceeds have been dis-

posed of.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance Receipt. of the purchase-money (if any) paid to him according to such account.

17. The Magistrate by whom the sale was made shall remit to the Treasury the fines so Disposal of fines, ex-

penses and surplus deducted. proceeds of sale.

The charges for feeding and watering deducted under section 16 shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be held in deposit for three months, and if no claim thereto be preferred and established within that period shall, at its

expiry, be remitted to the treasury.

18. Omitted.

19. No Magistrate officer of Police, or other officer or pound-keeper appointed under the provi-Officers and poundsions herein contained, shall, directly or keepers not to purchase indirectly, purchase any cattle at a sale cattle at sales under Act. under this Act.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this Chapter, unless such Pound-keepers when not to release impounded release or delivery is ordered by a Magiscattle. trate or Civil Court.

CHAPTER V.

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act Power to make complaints. may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District or any Magistrate authorised to receive and try charges without reference by the Magistrate of the District.

SECS. 16-25.]

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may Procedure on complaint. be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an

enquiry into the case.

22. If the seizure or detention be adjudged illegal, the

for Compensation illegal seizure or deten-

Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, ceeding one hundred rupees, to be paid by

the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the com-

plainant in procuring the release of the cattle;

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, Release of cattle. order their release, and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

23. The compensation, fines and expenses mentioned in section 21 may be recovered as if they were Recovery of compensa-

fines imposed by the Magistrate. tion.

CHAPTER VI.

PENALTIES.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act, Penalty for forcibly opposing the selzure of cattle or rescuing the

and whoever rescues the same after seizure, either from a pound or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall on conviction before a Magistrate, be punished with imprisonment for a period not exceeding one month, or with

fine not exceeding fifty rupees, or with both.

25. Any fine imposed under the next following section or for the offence of mischief by causing cattle to trespass on any land may be re-Recovery of penalty for covered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of tres-

mischief committed by causing cattle to trespass.

REAL TRIBLESTORS

passing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

26. Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits Penalty for damage to be damaged any land, or any crop or caused to land or crops produce of land, or any public road, by or public roads by pigs. allowing such pigs to trespass thereon,

shall, on conviction before a Magistrate, be punished with

fine not exceeding ten rupees.

His Highness' Government Jammu and Kashmir by notification in the Jammu and Kashmir Government Gazette, may from time to time, with respect to any local area speci-fied in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees," or as if there were both such reference and such substitution.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of

section 19 or omitting to provide any im-Penalty on pound-keeper failing to perform duties.

pounded cattle with sufficient food and

water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the

pound-keepers salary.

28. All fines recovered under section 25, section 26, or section of fines re- section 27 may be appropriated in whole Application of fines reor in part as compensation for loss or damcovered under section 25, age proved to the satisfaction of the con-26, or 27. victing Magistrate.

CHAPTER VII.

SUITS FOR COMPENSATION.

Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing Saving of rights to sue for compensation. for compensation in any competent Court.

Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set off and deducted from any sum Set off. claimed by or awarded to him as compensation in such suit.

CHAPTER VIII.

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31. The Superintendents of Police, may, within their respective jurisdictions, by notification in the Jammu and Kashmir Govern-Power of Superintenden; of Police to fix and revise ment Gazette, fix or from time to time rethe scale of charges. vise the scale of charges for the up-keep of the impounded cattle for the purposes of this Act.

32. The pounds established under this Act may, whenever necessary, be utilized for the up-keep of cattle to which the provisions of the rou ids may be used for unclaimed or attached Law for the time being in force, relating to cattle. unclaimed or attached property apply. The expenses of such cattle shall be paid according to the scale in force.

- His Highness' Government Jammu and Kashmir, may, from time to time, subject to such Transfer of functions conditions as may be considered proper, by and surplus to any local authority. Notification in the Jammu and Kashmir Government Gazette:—
- (a) transfer to any local authority all or any of the functions of His Highness' Government Jammu and Kashmir or the Superintendent of Police of the Province under this Act within the local area subject to the jurisdiction of the local authority, and
- (b) direct that the whole or any part of the surplus accruing in such local area under section 17 of this Act shall be placed to the credit of such local fund or funds as may be formed for such local area;

and may from time to time by Notification in the Jammu and Kashmir Government Gazette cancel or vary any Notification under this section.]

Section 33 added by Notifiction 22-L/83 published in Government Gazetted dated 19th Magh 1983.

THE Contract Act, 1977.

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THE CONTRACT ACT, 1977.

Act No. IX of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September 1920, and State Council Resolution No. 1 dated 8th April 1925 (Notification 14-L/81).]

Whereas it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows:—

PRELIMINARY.

1. Nothing herein contained shall affect the provisions of any Act not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.

A proposal, when accepted, becomes a promise:

(c) The person making the proposal is called the "promisor," and the person accepting the proposal is called the

"promisee":

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise:

(e) Every promise and every set of promises, forming

the consideration for each other, is an agreement:

(f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises:

(g) An agreement not enforceable by law is said to be

void:

(h) An agreement enforceable by law is a contract:

(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract:

(i) A contract which ceases to be enforceable by law

becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed Communication accepto be made by any act or omission of the tance and revocation, of proposals. party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation or which has the effect of communicating it.

4. The communication of a proposal is complete when Communication when it comes to the knowledge of the person to

whom it is made.

The communication of an acceptance is complete,as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge

of the proposer.

The communication of a revocation is complete,-

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes

to his knowledge.

Illustrations.

(a) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(b) B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete,—

as against A, when the letter is posted; as against B, when the letter is received by A.

(c) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched.

It is complete as against B when B receives it

B revokes his acceptance by telegrams. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Bevocation of proposals and acceptance.

Bevocation of proposals communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the movement when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when

the letter communicating it reaches A but not afterwards.

Bevocation how made. 6. A proposal is revoked—

(I) by the communication of notice of revocation by

the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition

precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be 7. In order to convert a proposal into

a promise, the acceptance must—

(I) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be

accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciproming conditions, or procal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and mise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS.

10. All agreements are contracts, if they are made by what agreements are the free consent of parties competent to contracts.

contracts. contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in the State and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

11. Every person is competent to contract who is of the Who are competent to age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgement as to its effect on his interests, cannot contract whilst such delirium or drunkness lasts.

"Consent" defired,

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

14. Consent is said to be free when it "Free consent" defined.

is not caused by-

(1) coercion, as defined in section 15, or

(2) undue influence, as defined in section 16, or

(3) fraud, as defined in section 17, or

(4) misrepresentation, as defined in section 18, or

(5) mistake subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue in-

fluence, fraud, misrepresentation or mistake.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the 'Ranbir Dand "Coercion" defined. Bidhi or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the 'R anbir Dand Bidhi is or is not in force in the place where the coercion

is employed.

Illustrations.

A, on board ship on the high seas causes B to enter into an agreement by an act amounting to criminal intimidation under the 1Ranbir Dand Bidhi. A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although 2section 382 of the Ranbir Dand Bidhi was not in

force at the time when or place where the act was done.

16. (I) A contract is said to be induced by "undue in-"Undue influence" fluence" where the relations subsisting between the parties are such that one of the defined. parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a posi-

tion to dominate the will of another-

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

Ranbir Penal Code. Section 506 Ranbir Penal Code.

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by

reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of

section III of the Evidence Act.

Illustrations.

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his

professional services. B employes undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appears to be unconscionable. It lies on B to

prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unsuually high rate of interest. A accepts the loan on these terms This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

17. "Fraud" means and includes any of the following acts committed by a party to a contract, "Fraud" defined. or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:-

(1) the suggestion, as a fact, of that which is not true,

by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of perform-

(4) any other act fitted to deceive;(5) any such act or omission as the law specially de-

clares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations.

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. That is not fraud in A.

(b) B is A's daughter and has just come of age. Here, the relation between

the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A—"if you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech.

(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

18. "Misrepresentation" means and in-"Misrepresentation" defined. cludes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is

not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which

is the subject of the agreement.

19. When consent to an agreement is caused by coercion, *., fraud or mis-Voidability of agree representation, the agreement is a contract ments without free consent. voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent, within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Expl nation—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was

made, does not render a contract voidable.

Illustrations.

(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, thereby induces B to buy the factory. The contract is voidable at the option of B.

(b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may

either avoid the contract or may insist on its being carried out and thee mortgage-debt redeemed.

(d) B, having discovered a vera of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance E is enabled to buy the estate at an under-value. The contract is

voidable at the option of A.

(e) A is entitled to succeed to an estate at the death of B; B dies: (), having received intilligence of B's death, prevents the intelligenc reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

19-A. When consent to an agreement is caused by undue influence, the agreement is a contract Power to set aside convoidable at the option of the party whose truct induced by undue in consent was so caused. fluence.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court

may seem just.

Illustrations.

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged

note. If B sues on this bond, the court may set the bond sside.

(b) A, a money-lender, advances Rs. 1.1) to B, an agriculturist, and by undne influence, induces B to execute a bond for Rs. 200 with interest as 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

20. Where both the parties to an agreement are under Agreement void where a mistake as to a matter of fact essential both paries are under misto the agreement, the agreement is void. take as to matter of fact.

Explanation .- An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(a) A agrees to sell to B a specific charge of goods supposed to be on its way from England to Bombay. It turns out that before the day of the bargain, the ship conveying the cargo had been cast away and the goods lest. Neither party was aware of the facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware

of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B agrees to sell it to C. B was dead at the time of agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in the State; Effect of mistakes as to but a mistake as to a law not in force in the the State has the same effect as a mistake of fact.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Law of Limitation; the contract is not voidable.

22. A contract is not voidable merely because it was caused by one of the parties to it being un-Contract caused by mistake of one party to der a mistake as to a matter of fact. matter of fact.

The consideration or object of an agreement is law-23. What considerations ful, unlessand objects are lawful

and what not .

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public

policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

(a) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the the house, is the consideration for 's promise to pay the 10,000 rupees. These are lawful considerations.

(b) A promises to pay B, 1,000 rupees at the end of six months, if C, who owes that sum to, B, fails to pay it. B promises to grant time to C accordingly. Here the promises of each party is the consideration for the promise

of the other party and they are lawful considerations.

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage Here A's promiss is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(d) A promises to maintain B's child and B promises to pay a 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of grains acquired, or to be acquired, by them by fraud. The agreement is

void, as its object is unlawful. (f) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupee to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void as it implies a fraud by concealment by A, on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for rabberry, and B promises to restore the value of the things taken

The agreement is void, as its object is unlawful,

(i) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The

agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the 'Ranbir Dand Bidhi.

Void Agreements.

24. If any part of a single consideration for one or more objects, or any one or any part of any one Agreements void, if of several considerations for a single object, considerations and ob. is unlawful, the agreement is void. jects unlawful in part.

Illustrations.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles B promises to pay to A salary of 10,"00 rupees a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

unless—

25. An agreement made without consideration is void,

without Agreement consideration void unless it is in writing and registered,

- (I) it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other, or unless
- (2) it is a promise, to compensate, wholly or in part, a person who has already voluntarily done or is a promise to compensate for something something for the promisor, or something done.

which the promisor was legally compellable to do, or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in or is a promise to pay a debt barred by limitation that behalf, to pay wholly or in part a law. debt o which the creditor might have en-

fo.ced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract. Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000 A puts his promise to B into writing and registers it. This is a contract.

(c) A finds B's purse and gives it to him. B promises to give A Rs. 50.

This is a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so do-

ing. This is a contract.

(e) I owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwith-

standing the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that

his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

26. Every agreement in restraint of the marriage of any person, other than a minor, is void. Agreement in restraint of marriage void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent Agreement in restraint of trade void. void.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within speci-Saving of agreement fied local limits, so long as the buyer, or any not to carry on business of person deriving title to the good-will from which good-will is sold. him, carries on a like business therein:

Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Every agreement, by which any party thereto is restricted absolutely from enforcing his 28. rights under or in respect of any contract, Agreements in restraint ot legal proceedings void .; by the usual legal proceedings in the ordinary tribunais, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1.—This section shall not render illegal a con-

tract by which two or more persons agree that any dispute which may arise between Saving of contract to refer to arnitration disthem in respect of any subject or class of pute that may arise. subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall

be recoverable in respect of the dispute so referred.

When such a contract has been made, a suit may be brought

for its specific performance, and if a suit, other than for such specific performance, Suits barred by such or for the recovery of the amount so awardcontract. ed, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any Saving of contract to refer questions that shave question between them which has already already arisen. arisen, or affect any provision of any law in

force for the time being as to references to arbitration.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void. Agreements void for uncertainty.

Illustrations.

(a) A agrees to sell to B "a hundred tons of oil." There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons of oil of a specified discription, known as an article of commerce. There is no uncertainty here to

make the agreement void.

- (c) A, who is a dealer in cocoanut-oil only agrees to sell to B "one hundred tons of oil." The nature of A's trade affords an indication of the meaning of the words, and A has entered into contract for the sale of hundred tons of cocoanut-oil.
- (d) A agrees to sell to B "all the grain in may granary at Ramnagar." There is no uncertainty here to make the agreement void.

¹Exceptions 2 and 3 to section 27 repealed side Act V of 1996 published in Government Gazette dated 26th Sawan 1996.

(e) A agrees to sell to B "one hundred maunds of rice at a price to be fixed by C." As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B "my white horse for supees five hundred or rupees one thousand." There is nothing to show which of the two prices was

to be given. The agreement is void.

30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any

game or other uncertain event on which any wager is made.

This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 1214-A of the Ranbi Dand Bidhi apply.

CHAPTER III.

OF CONTINGENT CONTRACTS.

31. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event happening.

If the event becomes impossible such contracts become

void.

Illustrations.

(a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's life-time.

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(b) A makes a connract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c) A contracts to pay B a sum of money when B marries C. C dies

without being married to B. The contract becomes void.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of tracts contingent on an that event becomes impossible, and not

before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

34. If the future event on which a contract is contingent

When event on which contract is contingent be deemed impossible, if it is the future conduct of a living person.

is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under

further contingencies.

Illustration.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

35. Contingent contracts to do or not to do anything

When contracts become void which are contingent on happening specified event within fixed time. if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

Contingent contracts to do or not to do anything if a

When contracts may be enforced which are contingent on specified event not happening within fixed time.

specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes

certain that such event will not happen.

Illustrations.

(a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may by enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is Agreement contingent on impossible events void. known or not to the parties to the agreement at the time when it is made.

Illustrations.

(a) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to perform, their respective promises, Obligation of parties unless such performance is dispensed with to contracts. or excused under the provisions of this Act, or of any other law.

Promises bind the representative of the promisors in case of the death of such promisors before performance, unless a

contrary intention appears from the contract.

A promise may be enforced by the legal representation of the promisee in the event of the death of such promisor before performance, unless a contrary intention appears from the contract.

Illustrations.

(a) A promises to deliver goods to B on a certain day on payment of Rs. 1,000 A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's represent-

atives or by B.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible Effect of refusal to accept offer of performance. for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:-

(I) it must be unconditional:

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the

whole of what he is bound by his promise to do:

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same

legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the first March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may Effect of refusal of put an end to the contract, unless he has party to promise wholly. signified by words or conduct, his acquiescence in its continuance.

Illustrations.

(a) A, a singer, enters into a contract with R, the manager of the theatre, to sing at his theatre two nights in every week during the next two months, and Bengages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it but is entitled to the compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom Contracts must be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it promise is to be perform. should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

- (a) A promises to pay B a sum of money. A may perform this promise either by personally paying the money to B or by causing it to be paid to B by another, and, if A dies before the time appointed for payment, his representative must perform the promise, or employ some proper person to do so.
- (b) A promises to paint a picture for B. A must perform this promise personally.
- 41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.
- Devolution of joint mise, then unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of survivors and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each promisor may or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

If any one of two or more joint promisors make default sharing of loss by de- in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(a) A,B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b) A, B and C jointly promise to pay D the sum of rupees 3,000. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate and 1,250 rupees from B.

(c) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made a joint promise, a release of one of such joint promise or by the promisee does not discharge the other joint promisor or joint promisors;

neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

A5. When a person has made a promise to two or more persons jointly, then, unless a contrary intention of joint tention appears from the contract, the rights.

between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

46. Where, by the contract, a promisor is to perform his

Time for performance of promise where no application is to be made and no time is specified.

promise without applictaion by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation-The question "what is a reasonable time"

is, in each particular case, a question of fact.

Time and place for performance of promise form it without application by the promise see, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's wharehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day and the promisor has not undertaken to performance on certain day perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and

within the usual hours of business.

Explanation.—The question "what is a proper time and

place" is, in each particular case, a question of fact.

49. When a promise is to be performed without application by the promisee, and no place is Place for performance of promise where no fixed for the performance of it, it is the duty of the promisor to apply to the application to be made and no place fixed for promisee to appoint a reasonable place for performance. the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply te R to appoint a reasonable place for the purpose of receiving it and must deliver it to him at such place.

The performance of any promise may be made in any manner, or at any time which the pro-Performance in manner misee prescribes or sanctions.

or at time prescribed or sanctioned by promisee.

Illustrations.

(a) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respective-

ly, of the sums which they owed to each other.

(c) A owes B 2,000 rupees. B accepts some of A's goods in reduction

of the debt. The delivery of the goods operates as a part payment.

(d) A desires B, who owes him Rs. 100 to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor Promisor not bound need perform his promise unless the proto perform, unless recipromisee is ready and willing to perform his cal promisee ready and willing to perform. reciprocal promise.

Illustrations.

(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the

goods on delivery. B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment

on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver

the goods on payment of the first instalment.

52. Where the order in which reciprocal promises are to to be performed is expressly fixed by the contract, they shall be performed in that Order of performance of reciprocal promises. order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b) A and B contract that A shall make over his stock-in trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract Liability of party pre-venting event on which becomes voidable at the option of the party contract is to take effect. so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of non-performance of the contract.

Illustrations.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescined it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to promise which should be first performed in contract consisting of reciprocal promises.

54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor

cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the nonperformance of the contract.

Illustrations.

(a) A hires B's ship to take in and convey from Calcutta to the Mauritius, a carge to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A carnot claim the performance of B's promise, and must make compensation to B for the loss which E sustains by

the non-performance of the contract.

(b) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and

B must make compensation.

(d) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Effect of failure to perform at fixed time, in contract in which time fails to do any such thing at or before the specified time, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from

the promisor for any loss occasioned to him by such failure.
If, in case of a contract voidable on account of the pro-

Effect of acceptance of performance at time other than that agreed upon.

misor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee

cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

56. An agreement to do an act impossible in itself is

Agreement to do impos. void.

A contract to do an act which after the contract is made becoming impossible becomes impossible, or, by reason of some event which the promisor could not prevent unlawful.

On unlawful.

On tract to do act after. becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the

act becomes impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful.

sation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

(a) A agrees with B to discover treasure by magic. The agreement is void.

(b) A and B contract to marry each other. Before the time fixed for the

marriage, A goes mad. The contract becomes void.

(c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practice polygamy. A nust make compensation to B for the loss caused to her by the non-performance of his promise.

(d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated.

The contract becomes void when war is declared.

(e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

Reciprocal promise to do things legal, and also other things illegal.

Reciprocal promise to do things legal, and also other things illegal.

Reciprocal promise to do to the things legal, and also other things which are illegal, the first set of promises is a contract, but the

second is a void agreement.

Illustration.

A and B agree that A shall sell B a house for 10,000 rapees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay

10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely that B may use the

house as a gambling house, and is a void agreement.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal, branch being illegal. branch alone can be enforced.

Illustration.

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and void agreement as to the

opium.

Appropriation of Payments.

Where a debtor, owing several distinct debts to one 59. person, makes a payment to him, either Application of payment with express intimation, or under circumwhere debt to be discharged is indicated. stances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations.

(a) A owes B, among other debts 1,000, rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the dircharge of the promissory note.

(b) A owes to B, omong other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had

demanded payment.

60. Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, Application of payment where debt to be discharged the creditor may apply it at his discretion is not indicated. to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not

barred by the law in force for the time being as to the limitation of suits.

61. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they Application of payment where neither party approare or are not barred by the law in force priates. for the time being as to the limitation of

suits. If the debts are of equal standing, the payment shalls be applied in discharge of each proportionably.

Contracts which need not be performed.

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter novation, it, the original contract need not be of rescision and alteration of contract. performd.

Illustrations.

(a) A owes money to B under a contract. It is agreed between A. B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt

of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new countract has been entered into.

63. Every promisee may dispense with or remit wholly or in part, the performance of the promise made to him, or may extend the time for Promisee may dispense with or remit performance such performance, or may accept instead of promise.

of it any satisfaction which he thinks fit.

Illustrations.

(a) A promises to paint a picture for B. B afterwards forbids him to do

so. A is no longer bound to perform the promise.

(b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were pavable. The whole debt is discharged.

(c) A owes B 5,000 rupee. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole

claim.

(d) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A without ascertaining the amount gives to B, and B. in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditor, including B, to pay them a composition of eight amas in the rupee upon their respective demands. Payment to B of 1,000

rupees is a discharge of B's demand.

When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein con-Consequences of rescision tained in which he is promisor. The party of voidable contract. rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

When an agreement is discovered to be void, or when a contract becomes void, any person who Obligation of person who has received any advantage under such has received advantage under void agreement or agreement or contract is bound to restore contract that becomes void. it, or to make compensation for it, to the

person from whom he received it.

Illustrations.

(a) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day and none after. B retains the 150 maunds after the first of May. He is bound to pay A for them.

(c) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundered rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescunds the contract. B must pay A for the five nights on which she had sung.

(d) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made it A had been able to sing

but must refund to B the 1,000 rupees paid in advance.

Mode of communicating or revoking rescission of voidable contract.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a pro-

posal.

67. If any

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract it it is caused by such neglect or refusal.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to for necessaries support, is supplied by another person with Claim supplied to person incapnecessaries suited to his condition in life, able of contracting, or on the person who has furnished such supplies his account. is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(a) A supplies B, a lunatic, with necessaries suitable to his condition in

life. A is entitled to be reimbursed from B's property. (b) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by another in payment of which inbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof,

the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or

delivered.

Illustrations.

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation

from B, if the circumstances show that he intended to act gratuitously.

Responsibility of finders takes them into his custody, is subject to the same responsibility as a bailee.

72. A person to whom money has been paid or anything Liability of person to delivered, by mistake or under coercion, whom money is paid, or thing delivered, by mistake or return it.

Illustrations.

(a) A and B jointly owe 100 rupees to C. A alone pays the amount to C and B not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

Compensation for loss or demage caused by breach of contract.

Compensation for loss or from the party who has broken the contract, compensation for any loss or damage cause

ed to him thereby, which naturally arose in the usual course of things from such breach, or which the parties, knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract

compensation for failure to discharge obligation resembling those created by contract. has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party

in default as if such person had contracted to discharge it and

had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

price to be pull on delivery. A breaks his promise, B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterward informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for

the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach

of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived it forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g) A contracts to let his ship to B for a year, from the first of January for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a smillar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the

sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine, to be conveyed, without de ay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so far the purpose of performing his contract with B. C fails to perform his contract with A, who cannot produce other iron, and B, in consequence, resciude the contract. C must pay to A 20,00 rupees, being the profit which A would have made by the

performance of his contract with B.

(k) A contracts with B to make and deliver to B, by a fixed day for a specified price, a certain fiece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(1) A, a builder, contracts to erect and finish a house by the first of January in or ler that B may give possession of it at that time to C, to whome B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of re-building the house for the rent lost, and for the compensation made to C.

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not occording to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be

re-imbursed.

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B in consequence of not receiving the money on that day is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, to-

gether with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpeter to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton is obliged to close his mill. A is not responsible to B

for the loss caused to B by the closing of the mill.

(q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps, of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the differense between the contract price of the cloth and its market price at the time of delivery, but not the profits which he has expected to obtain by making caps, nor the expenses

which he has been put to in making preparation for the manufacture.

Sydeny in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest and the expense to which he is put by his detention in Calcutta, and the excess, if any of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in

Compensation for breach case of so tains any

case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach

is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bailbond, recognizance or other instrument of the same nature, or under the provisions of any law, or under the orders of His Highness, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(a) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compenstation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay

the whole penalty.

(d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensations as the Court considers reasonable.

(e) A, who owes money to B, a money lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty,

and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay Ba loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is stipulation by way of

penalty.

75. A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

A, a singer contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilments of the contract.

SALE OF GOODS. Sections 76-123.] Repealed.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the other from loss caused to him by the "Contract of indemnity" conduct of the promisor himself, or by the defined. conduct of any other person, is called a "contract of indemnity."

Illustratin.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 ruces. This is a contract of indemnity.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled Rights of indemnity

holder when sued. to recover from the promisor-

(I) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to in-

demnify applies;

- (2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;
- (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

The promisor in a contract of indemnity, who has indemnified the promisee is entitled to the rights of a surety as de-

fined in section 141.

Any contract of indemnity which has been obtained by means of misrepresentation, made by the promisee or with his knowledge or assent, concerning a material part of the transaction is invalid.

Explanation.—Keeping silence as to material circum-

stance is such misrepresentation.

126. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The "Contract of guarantee", "surety", "principal debperson who gives the guarantee is called tor", and "creditor." the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor".

and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

127. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient to the surety for giving the guarantee.

Illustratins.

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to tuarantee the payment in consideration of A's promise to deliver the goods, this is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient

considration for C's promise.

(c) A sells and delivers goods to B. Cafterwards, without consideration,

agrees to pay for them in default of B. The agreement is void.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the accepter. The bill is distonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transactions is called a "continuing guarantee"

Illustrations.

(a) A, in consideration that B will employ C in collecting the rents of B's zamindari promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee and accordingly he is not liable for the price of the four sacks.

Revocation of continuing ed by the surety, as to future transactions, by notice to the creditor.

Illustrations.

f or C, guarantees to B, for twelve months, the due payment of all such

bills to the extent of 5.000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards at the end of three months, A revokes the guarantee. This revocation discharges A from all liabillity to B for any subsequent discount. But A is liable te B for the extent of 2,000 rupees, on default of C.

(b) A guarantees to B to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A

is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a re-Revocation of continuing vocation of a continuing guarantee, so far guarantee by surety's death. as regards future transactions.

Liability of persons, primarily liable not affected by arrangement between them that one shall be surety on others default.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two

persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustrations.

A and B make a joint and several promissory note to C. A frakes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any variance, made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the Discharge of surety by variance in terms in con-

surety as to transactions subsequent to tract. the variance.

Illustrations.

(a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(h) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of duty

not effected by the later Act.

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent C and B agree that B should be paid by a commission on the goods sold by him and not by a

fixed salary. A is not liable for subsequent misconduct of B.

(d) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e) C contracts to lend B 5,000 rupes on the 1st March. A guarantees re-C pays the 5,000 rupees to B on the 1st January. A is discharged from his libility, as the contract has been varied in as much as C might sue B

for the money before the 1st of March.

134. The surety is discharged by any contract between

Discharge of surety by release or discharge of principal debtor.

the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(a) A gives a guarantee to C for goods to be supplied?by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C. and A is discharged from his suretyship.

(b) A contracts with B to grow a crop of indigo on A's land and to deliver it to Bat a fixed rate, and C'guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land and thereby prevents him from raising the indigo. C is no longer liable on his

guarantee.

(c) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

135. A contract between the creditor and the principal

Discharge of surety when creditor compounds with, gives time to or agrees not to sue principal debtor.

debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

136. Where a contract to give time to the principal debtor is made by the creditor with a third per-Surety not discharged son, and not with the principal debtor, when agreement made with third person to give the surety, is not discharged. time to principal debtor.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any Oreditor's forbearance other remedy against him does not, in the to sue does not discharge surety. absence of any provision in the guarantee to the contrary, discharge the surety.

Provided that by such forbearance the suit or remedy does not become barred by the Law of Limitation for the

time being in force.

Illustration.

B owes to Ca debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others, neither does it free the surety so Release of one co-sure-

released from his responsibility to the

other sureties.

ty does not discharge others.

Discharge of surety! by

creditor's act or omission impairing surety's eventual remedy.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

(a) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B

the last two instalments. A is discharged by this prepayment.

(b) C lends money to B on the security of a joint and several promissory not made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realised. A is discharged from liability on the note.

(c) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is

nor liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the sure-Rights of surety on ty, upon payment or performance of all payment or performance, that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

surety's right to pal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(a) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture, C cancels the mortgage. B boccmes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b) C, a creditor, whose advance to B is secured by a decree, receives also a guarantée for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the

execution. A is discharged.

(c) A as surety for , makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

142. Any guarantee which has been obtained by means

of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstance is invalid.

Illustrations.

(a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as

a surety.

Guarantee on contract that creditor shall not act upon it until another person has joined in it as co-surety, joins.

The person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Implied promise to in.

promise by the principal debtor to indemnify surety.

promise by the principal debtor to indemnify surety.

promise by the principal debtor what-

ever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(a) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suits, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs, He can recover from B the amount paid by him for costs, as

well as the principal debt.

(b) Clends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill demands payment of it from A, and on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice

actually supplied.

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or differ-Co-sureties liable to ent contracts, and whether with or without contribute equally. the knowledge of each other, the co-sure-

ties, in the absence of any contract to the contrary, are liable as between themselves, to pay each an equal share of the whole debt, or of that part of it which re-

mains unpaid by the principal debtor.

Illustrations.

(a) A, B and C are sureties to D for the sum of 3,000 rurees lent to E. E makes default in payment. A, B and C are liable, as between themselves,

to pay 1,000 rupees each.

(b) A, B and C are sureties to D for the sum of 1,000 rupees lent to E and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of Liabilty of co-sureties

bound in different sums. their respective obligations permit.

Illustrations.

(a) A, B and C as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rurees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(b) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the renalty of 10,000 supees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay

10,000 rupees, and B and C 15,000 rupees each.

(c) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, and B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly amounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

CHAPTER IX.

OF BAILMENT.

148. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose "Bailment," "bailer" is accomplished, be returned or otherwise and "Balice" defined. disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

Explanation .- If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of

bailment.

149. The delivery to the bailee may be made by doing anything which has the effect of putting Delivery to bailee how the goods in the possession of the intendmade. ed bailee or of any person authorised to hold them on his behalf.

The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is Ballor's duty to disclose faults in goods aware, and which materially interfere with bailed. the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

⁽a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as Care to be taken by a man of ordinary prudence would, under bailee. similar circumstances, take of his own goods

of the same bulk, quality and value as the goods bailed.

The bailee, in the absence of any special contract, 152. is not responsible for the loss, destruction Bailee when not liable or deterioration of the thing bailed, if he for loss, etc. of thing bailed. has taken the amount of care of it described

in section 151.

153. A contract of bailment is voidable at the option of of the bailor, if the bailee does any act with Termination of bailregard to the goods bailed, inconsistent ment by bailee's act inwith the conditions of the bailment. consistent with conditions.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compen-Liability of bailee making unauthorised use sation to the bailor for any damage arising of goods bailed to the goods from or during such use of them.

Illustrations.

(a) A lends a horse to B for his own riding only. B allows C, a men ber of his family, to ride the horse. Crides with care, but the lorse sec dertally falls and is injured. B is liable to make con rensation to A for the injury done to the borse.

(b) A hires a horse in Calcutta from B expressly to march to Benares. A rides with the due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is lisble to make compensation to B for the injury to the horse.

If the bailee, with the consent of the bailor, mixes 155.

Effect of mixture, with bailor's consent, of his goods with bailees'.

156. If the

Effect of mixture, without bailor's consent, when the goods can be. separat-

the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced. bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is

bound to bear the expenses of separation or division, and any

damage arising from the mixture.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 tales with other tales of his own, bearing a different mark: A is entitled to have his loc bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

157. Effect of mixture without bailor's consent when the goods cannut be separated.

If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the

bailer is entitled to be compensated by the the bailee for the loss of the goods.

Illustration.

A bales a barrel of Cape flour worth Rs. 45 to B. F, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the Repayment by bailor bailor, and the bailee is to receive no reof necessary expenses. muneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose

of the bailment.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or Restoration of goods purpose. But if, on the faith of such loan lent gratuitously. made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the Return of goods bailed goods bailed, without demand, as soon as the time for which they were bailed has

expired, or the purpose for which they were accomplished.

161. If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

on expiration of time or accomplishment of pur-

pose.

bailed has been

Bailee's responsibility when goods are not duly returned.

If a bailor omits or refuses to take the goods at the proper time from the bailee who is ready and willing to deliver them, he is responsible for any necessary expenses of and incidental to their proper custody.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Termination of gratuitous bailment by death.

Bailor entitled to increase or profit from goods bailed.

In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason Bailor's responsibility that the bailor was not entitled to make to bailee. the bailment, or to receive back the goods

or to give directions respecting them.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to Bailment by several the directions of, one joint owner without joint owners. the consent of all, in the absence of any

agreement to the contrary.

If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or Bailee not responsible according to the directions of, the bailor, on redelivery to bailor without title. the bailee is not responsible to the owner in respect of such delivery.

If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop Right of third person the delivery of the goods to the bailor, claiming goods bailed.

and to decide the title to the goods.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but Right of finder of he may retain the goods against the owner goods; may sue for specific reward offered. until he receives such compensation; and, where the owner has offered a specific re-

ward for the return of goods lost, the finder may sue for such

reward, and may retain the goods until he receives it.

When finder of thing commonly on sole imay able diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing

the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the

thing found amount to two-thirds of its value.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(a) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(b) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the

price. B is not entitled to retain the coat until he is paid.

The Bankers, factors, wharfingers, and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

Bailments of Pledges.

172. The bailment of goods as security for payment of a debt or performance of a promise is called the "pawnee" defined. ed "pledge." The bailor is in this case called the "pawnee".

Pawnee's right of re. for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

174. The pawnee shall not, in the absence of a contract

Pawnee not to retain for debt or promise other than that for which goods pledged.

Presumption in case of su sequent advances.

to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for Pawnee's right as to extraordinary expenses the preservation of the goods pledged. incurred.

pawnor makes default in payment of the If the 176. debt, or performance, at the stipulated Pawnee's right where time of the promise, in respect of which the pawnor makes default. goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and refain

the goods pledged as a collateral security; or he may sell the things pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt,

or performance of the promise, for which the pledge is made, and the pawnor makes pawnor's Defaulting default in payment of the debt or performright to redeem. ance of the promise at the stipulated time,

he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

178. A person who is in possession of any goods, or of

any bill of lading, dock-warrant, ware-Pledge by possessor of house-keeper's certificate, wharfinger's cergoods, or of documentary tificate, or warrant or order for delivery, title to goods. or any other document of title to goods,

may make a valid pledge of such goods or documents: provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

provided also that such goods or documents have not been obtained from their lawful owner, or from any person in law-

ful custody of them, by means of an offence or fraud.

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the Pledge where pawnor has extent of that interest. only a limited interest.

Suits by Bailees or Bailors against Wrong-doers.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is en-Suit by bailor or bailee titled to use such remedies as the owner against wrong-doer. might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between Apportionment of relief the bailor and the bailee, be dealt with according to their respective interests.

or compensation obtained by such suits.

CHAPTER X.

AGENCY.

Appointment and Authority of Agents.

An "agent" is a person employed to do any act for another or to represent another in dealings "Agent" and "princiwith third persons. The person for whom pal" defined. such act is done, or who is so represented, is called the "principal."

183. Any person who is of the age of majority according to the law to which he is subject, and who Who may employ is of sound mind, may employ an agent.

agent.

184. As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and Who may be an agent. of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

185. No consideration is necessary to Consideration not neces-

create an agency. sary.

186. The authority of an agent may be expressed or implied. Agent's authority may be expressed or implied.

187. An authority is said to be express when it is given by words spoken or written. An authority Definitions of express is said to be implied when it is to be inand implied authority. ferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purpose of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

188. An agent having an authority to do an act has authority to do every lawful thing which is

authority of agent's necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(a) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b) A constitutes B his agents to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the

purpose of carring on the business.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Illustrations.

(a) An agent for sale may have goods repaired if it be necessary.
 (b) A consigns provisions to B at Calcutta, with directions to send them

immediately to C at Cuttack, B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

Sub-agents.

When agent cannot lawfully employ another to perwhen agent cannot form acts which he has expressly or impliedly undertaken to perform personally,
unless by the ordinary custom of trade a sub-agent may, or,
from the nature of the agency, a sub-agent must, be employed.

191. A "sub-agent" is a person employed by, and acting under the control of, the original agent in

"Sub-agent" defined. the business of the agency.

192. Where a sub-agent is properly appointed the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

The agent is responsible to the princi-

for sub-agent. pal for the acts of the sub-agent.

The sub-agent is responsible for his acts to the agent, sub-agent's responsible but not to the principal, except in case of fraud or wilful wrong.

193. Where an agent, without having authority to do

Agent's responsibility sub-agent appointed a person to act as a sub-agent appointed person in the relation of a principal to an agent, and is responsible for his acts both

to the principal and to th rd persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

194. Where an agent, holding an express or implied

Relation between for the principal in the business of the agency, has named another person accordingly appointed by agent to act in business of agency, such person is not a sub-agent, but an agency.

business of the agency as is entrusted to

him.

Illustrations.

(a) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b) A authorises B, a merchant in Calcutta, to recver the moneys due to A from C and Co. B instructs D, a solicitor, to take legal proceedings against C and Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

Agent's duty in nam. is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this he is not responsible to the principal for the acts of negligence of the agent so selected.

Illustrations.

(a) A instructa B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is

not, but the surveyor, is responsible to A.

(b) A consigns goods to P, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

Right of person as to acts done for him without his authority. Effect of ratification.

Right of person as to authority. Effect of ratification.

Right of person as to authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

197. Ratification may be expressed or may be implied in Ratification may be the conduct of the person on whose behalf

expressed or implied. the acts are done.

Illustrations.

(a) A without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(b) A, without B's authority, lends B's money to C. Afterwards B accepts interests on the money from C. B's conduct implies a ratification of the loan.

198. No valid ratification can be made by a person whose Knowledge requisite for knowledge of the facts of the case is materially defective.

199. A person ratifying any unauthorised act done on Effect of ratifying un. his behalf ratifies the whole of the transactumbers of a transaction. his of which such act formed a part.

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(a) A, not being authorised thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b) A holds a lease from B, terminable on three months' notice. C an authorised person, gives notice of termination to A. The notice cannot be ratified

by B, so as to be binding on A.

Revocation of authority.

201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by Termination of agency. either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any the time being in force for the relief of insolvent Act, for debtors.

Where the agent has himself an interest in the pro-202. subject-matter the forms perty which of the agency, the agency cannot, in the Termination of agency, absence of an express contract, be terminated

where agent has an interest in subject-matter.

to the prejudice of such interest.

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke his authority, nor can

Illustrations.

it be terminated by his insanity or death.

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price, the amount of his own advances. A cannet revoke this authority, nor is it terminated by his insanity or death.

The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time When principal may revoke agent's authority. before the authority has been exercised so

as to bind the principal.

204. The principal cannot revoke the atuhority given to his agent after the authoriv has neen part-Revocation where auly exercised so far as regards such acts and thority has been partly exercised.

obligations as arise from acts already done in the agency.

Illustrations.

(a) A authorises B to buy 1,000 bales of coston on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorises B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can

revoke B's authority to pay for the cotton.

Compensation for revocation by principal or
renunciation by agent.

Compensation for revocation by principal or
renunciation by agent.

Compensation for reperiod of time, the principal must make
compensation to the agent, or the agent to
the principal, as the case may be, for any
previous revocation or renunciation of the agency without sufficient cause.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

207. Revocation and renunciation may be expressed or Revocation and renun. may be implied in the conduct of the

ciation may be expressed principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect

When termination of agent's authority takes effect as to agent, and as to third persons.

not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(a) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b) A, at Madras, by letter directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton, C pays B the money, with which B absconds. C's payment is good as against A.

(c) A directs B, his agent, to pay certain money to C. A dies and D takes out probate to his will. B, after A's death, but before hearing of it, pays the

money to C. The payment is good as against D, the executor.

Agent's duty on termination of agency by principal's death or insanity.

an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

210. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an Termination of subagent's authority) of the authority of all sub-agents appointed by hin.

Agents' Duty to Principal.

21. An agent is bound to conduct the business of his principal according the directions given by the principal, or in the absence of any such Agent's duty in conduct-ing principal's business. directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(a) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(b) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before pay noot, becomes insolvent. B must make good the loss to A.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar Skill and diligence rebusiness, unless the principal has notice quired from agent. of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirect'y or remotely caused by such neglect, want of skill or misconduct.

Illustrations.

- (a) A. a merchant in Calcutta, has an agent, B, in London to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and tor any further direct loss-as c. g., by variation of rate of exchange-but not further.
- (b) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained,

(c) A, an insurance-broker employed by B to effect an insurance on a ship omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing car be recovered from the underwriters. A is bound to make good the loss to B.

(d) A, merchant in England, directs B, his agent at Bombay, who accepts the the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in Enland. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

213. An agent is bound to render proper accounts to his

Agent's accounts. principal on demand.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicate with principal.

Agent' duty to communicate with principal.

cating with his principal, and in seeking to obtain his instruction.

215. If an agent deals on his own account in the busi-

Right of principal when agent deals on his own account, in business of agency without pricipal's consent.

ness of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate that the transaction, if the case shows either that any material fact has been dishonestly conecealed from him by the agent, or that

has been dishonestly conecealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustration.

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any

material fact, or that the sale has been disadvantageous to him.

(b) A directs B to sell A's estate. B, on looking over the estate before selling it finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conseals the discovery of the mine. A allows B to buy, in ignorance of existence of mine. A, on discovering that B knew of the the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

216. If an agent, without the knowledge of his principal,

Principal's right to benefit gained by agent dealing on his own account in business of agency.

deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Agent's right of retainer out of sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on

Agent's duty to pay his account.

pal.

When agent's remunerthe agent until the completion of such act;
but an agent may detain moneys received
by him on account of goods sold, although the whole of the
goods consigned to him for sale may not have been sold, or
although the sale may not be actually complete.

220. An agent who is guilty of misconduct in the business of the agency is not entitled to any

Agent not entitled to remuneration in respect of that part of the business which he has misconducted.

Illustrations.

(a) A employed B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees in security which he ought toh a ve known to be bad, whereby A loses 2,000 rupees. Bis entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services,

and must make good the loss.

agent is entitled to retain goods, papers and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

Principal's Duty to Agent.

Agent to be indemnified acts done by such agent in exercise of the authority conferred upon him.

Illustrations.

(a) B, at Singapur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorises him to defend the suit. B defends the suit, and is compelled to pay damages, and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

(b) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs

expenses. A is liable to B for such damages, costs and expenses.

223. Where one person employs another to do an act, and the agent does the act in good faith. Agent to be inderonified the employer is liable to indemnify the against consequences of agent against the consequences of that act, acts done in good faith. though it causes an injury to the rights of

third persons.

Illustrations.

(a) A, a decree-holder and entitled to execution of B's goods requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(b) B, at request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has

been compelled to pay to C and for B's own expenses.

224. Where one person employs another to do an act which is criminal, the employer is not lia-Non-liability of emable to the agent, either upon an express ployer of agent to do a or an implied promise, to indemnify him criminal act. against the consequences of that act.

Illustrations.

(a) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so

doing. A is not liable to indemnify B for those damages.

(b) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication and all costs and damages of any action in respect thereof. B is saed by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill. Compensation to agent for injury caused by

principal's neglect.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contract with third persons.

gations arising from acts done by an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the 'principal, set-off against that claim a debt due to himself from B.

(b) A, being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to

pay the sum in question to B.

do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority, is binding as between him and his principal.

Illustration.

A, being owner of ship and cargo, authorises B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. When an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction.

Illustration.

A authorises B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

Onsequence of notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between

the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(a) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a

debt owing to him from C.

Agent cannot personal. agent cannot personally enforce contracts agent cannot personally enforce contracts entered into by him on behalf of cipal, nor is he personally bound by them.

Presumption of contract

Such a contract shall be presumed to exist in the following cases:—

(1) Where the contract is made by an agent for the sale or purchsae of goods for a merchant resident abroad:

(2) Where the agent does not disclose the name of his his principal:

(3) Where the principal, though disclosed, cannot be be sued.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against

the principal, the same rights as he would have had as against

the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of conneither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the persubject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable. Right of person dealing with agent personally Hable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C,

or both, for the price of the cotton.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held I Consequence of inducing agent or principal to liable, or induces the principal to act upon act on belief that princithe belief that the agent only will be held pal or agent will be held liable, he cannot afterwards hold liable the excusively liable.

agent or principal respectively.

235. A person untruly representing himself to be the authorised agent of another, and thereby inducing a third person to deal with him Liability of pretended agent. as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was Person falsely contracting as agent not entitle! in reality acting, not as agent, but on his to performance. own account.

When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is Liability of principal bound by such acts or obligations if he has inducing belief that agent's unanthorised by his words or conduct induced such acts were authorised. third persons to believe that such acts and obligations were within the scope of the

agent's authority.

Il'ustrations.

(a) A consigns goods to B for sale and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the the goods at a price lower than the reserved price. A is bound by he contract.

(b) A entrus's B with negotiable instruments endorsed in blank. B sells

them to C in violation of private orders from A. The sale is good.

by agents acting in the course of their business for their principals, have the same effect on agreement, of misrepresentation or fraud by agent.

Beffect on agreement, of mess for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed by agents, in matters which do not fall within their authority, do not affect their principals.

Illustrations.

(a) A being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorised by B to make. The contract is voidable, as between B and C, at the option of C.

(b) A, the captain of B's ship signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between

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CHAPTER XI.

OF PARTNERSHIP. Sections 239-266.

Repealed

THE CODE OF CIVIL PROCEDURE, 1971.

Act No. X of 1977.

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THE CODE OF CIVIL PROCEDURE, 1977.

Act No. X of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's Endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April 1925, (notification No.14-L/81)].

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

PRELIMINARY.

1. 1[(i) This Act may be cited as Code of Civil Procedure (Act X of 1977).

(ii) It extends to the whole of Jammu and Kashmir State.]

2. In this Act, unless there is anything repugnant in the subject or context,—

(I) "Code" includes rules:

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary, or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include—

(a) any adjudication from which an appeal lies as an

appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final:

(3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made:

(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court").

(5) "foreign Court" means a Court not established or

continued by His Highness:

Explanation.—The Residency Court is a foreign Court within the meaning of this definition:

(6) "foreign judgement" means the judgment of a foreign

Court:

- (7) "Government Pleader" includes any officer appointed by '[the Government] to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader:
- (8) "Judge" means the presiding officer of a Civil Court:
 (9) "judgment" means the statement given by the Judge
 of the grounds of a decree or order:

- (10) "judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made:
- (II) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person

in wrongful possession:

(13) "moveable property" includes growing crops: (14) "order" means the formal expression of any deci-

sion of a Civil Court which is not a decree:

(15) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and 2[an attorny of the High Court].

(16) "prescribed" means prescribed by rules:

(17) "public officer" means a person falling under any of the following descriptions, namely:-

(a) every judge;

(b) omitted;

"In sections 2 (7), 5 (1), 55, 57, 59 (3), 61, 67, 68, 70, 82, 92, 137, 139 and 143 the words "the Government" substituted for the words "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996. Inserted vide notification 3-L/85 published in Government Gazette dated 8th Bhadon

1985.

(c) every commissioned or gazetted officer in the mili-

tary forces of His Highness;

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinment;

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public

health, safety or convenience;

- (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and
- (h) every officer in the service or pay of the Governmment, or remunerated by fees or commission for the performance of any public duty:

(18) "rules" means rules and forms contained in the First

Schedule or made under section 122:

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds: and

(20) "signed," save in the case of a judgment or decree,

includes stamped.

3. For the purposes of this Code, the District Court is subordination of Courts. Subordinate to the High Court, and every Civil Court of a grade inferior to that of a to the High Court and every Court of Small Causes is subordinate to the High Court and District Court.

4. (I) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this

Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

Application of the Code to Revenue Courts.

Application of the Code to Revenue Courts.

Government] may, by notification in the Government Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as '[the Government] may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil

nature.

6. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

7. The following provisions shall not extend to Courts constituted under the Small Causes Courts Act, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say,—

(a) so much of the body of the Code as relates to—

(i) suits excepted from the congizance of Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against immoveable property; and

(b) the following sections, that is to say,—

section 9,

sections 91 and 92, sections 94 and 95 so far as they 2 authorise or relate to:—

(i) orders for the attachment of immoveable property;

(ii) injunctions;

(iii) the appointment of a reciever of immoveable property; or

See footnote under section 2 (7).
Substituted vide Act IX of 1998 published in Government Gazette dated 18th Har 1988, for the words "so far as they relate to injunctions and interlocutory orders".

(iv) the interlocutory orders referred to in clause (c) of section 94], and sections 96 to 112 and 115.

8. Omitted.

PART I.

SUITS IN GENERAL.

Jurisdiction of the Courts and Res Judicata.

9. The Courts shall (subject to the provisions herein Courts to try all civil contained) have jurisdiction to try all suit of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation.-A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of

questions as to religious rites or ceremonies.

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly Stay of suit. and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in the State having jurisdiction to grant the relief claimed.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in the State from trying a suit

founded on the same cause of action.

11. No Court shall try any suit or issue in which the matter directly and substantially in issue Res judicata. has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question

whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such

Explanation III .- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly by the other.

Explanation IV .- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the pur-

poses of this section, be deemed to have been refused.

Explanation VI.-Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim

under the persons so litigating.

Explanation VII.—Where a party to a civil suit, sets up or relies on a pedigree, or on the legitimacy or the genuineness or validity of the adoption of any person, including himself and the question of such pedigree legitimacy or adoption is put directly or substantially in issue, and is, after a full and regular trial, decided against such party, then as regards such question or issue the party's descendants, heirs, executors, administrators or assigns shall in any future litigation be deemed to claim under him.

Explanation VIII.—Where a party to a suit claims certain immoveable property to be his and the Court decides that it is not his, such decision shall be binding on him and those claiming under him, in any future litigation in which he or they claim as plaintiff or applicant or plaintiffs or applicants the property as against a person or persons in possession or

occupation of it.

12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitl-Bar to further suit. ed to institute a suit in respect of such cause of action in any Court to which this Code applies.

13. A foreign judgment shall be conclusive as to any When foreign judgment matter thereby directly adjudicated upon between the same parties or between parties not conclusive. under whom they or any of them claim litigating under the same title except—

(a) where it has not been pronounced by a Court of

competent jurisdiction; (b) where it has not been given on the merits of the

(c) where it appears on the face of the proceedings to case; be founded on an incorrect view of international law or a refusal to recognise the law of the State in cases in which such law is applicable;

(d) where the proceedings in which the judgment was

obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of

any law in force in the State:

14. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that Presumption as to foreign judgments. judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Palace of Suing.

15. Every suit shall be instituted in Court in which suits to the Court of the lowest grade competent to be instituted. try it.

16. Subject to the pecuniary or other Suits to be instituted limitations prescribed by any law, suitswhere subject-matter situate.

(a) for the recovery of immoveable property with or without rent or profits,

(b) for the partition of inmoveable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,

(d) for the determination of any other right to or inter-

est in immoveable property,

(e) for compensation for wrong to immoveable property,

(f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose

jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section "property" means pro-

perty situate in the State.

17. Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable pro-Suits for immoveable perty situate within the jurisdiction of property situate within different Courts, the suit may be instituted jurisdiction of different Courts. in any Court within the local limits of whose

jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

Place of institution of suit where local limits of jurisdiction of Courts are uncertain.

18. (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a state-

ment to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit

to exercise jurisdiction.

(2) Where a statement has not been recorded under subsection (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

19. Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits Suit for compensation for wrongs to person or of the jurisdiction of one Court and the moveables. defendant resides, or carries on business,

or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations.

(a) A, residing in Delhi, beats B in Calcutta, B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B, may sue A either in Calcutta or in Delhi.

20. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local Other suits to be instilimits of whose jurisdictiontuted where defendants reside or cause of action arises.

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on busi-

ness, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I.—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.—A corporation shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has

also a suboridnate office, at such place.

Illustrations.

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and Cat Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides, but in each of these cases, if the non-resident defendant objects, the

suit cannot proceed without the leave of the Court.

21. No objection as to the place of suing shall be allowed by any appellate or revisional Court unless Objections to jurisdic. such objection was taken in the Court of tion. first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

22. Where a suit may be instituted in any one of two or more Courts and is institued in one of such Courts, and defendant, after notice to the Power to transfer suits which may be instituted other parties, may, at the earliest possible ir more then one Court. opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

23. (1) Where the several Courts having jurisdiction are subordinate to the same Court, an application under section 22 shall To what Court application lies. be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts the application shall be made to the High

Court.

24. (1) On the application of any of the parties and after notice to the parties and after hearing such General of them as desire to be heard, or of its own and withtransfer motion without such notice, the High Court drawal.

or the District Court may at any stage-(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to

't and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court

from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the

District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

Institution of Suits.

26. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

Summons and Discovery.

- 27. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.
 - 28. Omitted. 29. Deleted.

30. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or

such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

31. The provisions in section 27 shall apply to summons to witness.

monses to give evidence or to produce documents or other material objects.

32. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

(a) issue a warrant for his arrest;(b) attach and sell his property;

(c) impose a fine upon him not exceeding five hundred rupees;

(d) order him to furnish security for his appearance and in default commit him to the civil prison.

Judgement and Decree.

33. The Court, after the case has been heard, shall pro-Judgment and decree nounce judgment, and on such judgment a decree shall follow.

Bhadon 1996.

Interest.

34. (I) Where and in so far as a decree is for the payment of money, the Court may, in the de-Interest. cree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such

interest, and a separate suit therefor shall not lie.

Costs.

35. (I) Subject to such conditions and limitations as may be prescribed, and to the provisions of Costs. any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow

the event, the Court shall state its reasons in writing.

(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

35-A. (I) If in any suit or other proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim Compensatory costs in respect of false or vexaor defence or any part of it is, as against tious claims or offences. the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part the Court, if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order

Bection 35-A inserted vide Act IV of 1988 published in Government Gazette dated 18th Har 1988.

for the payment to the objector, by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No court shall make any such order for the payment of an amount exceeding one thousand rupees or exceeding the limits of its pecuniary jurisdiction whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any court exercising the jurisdiction of a Court of Small Causes under the Small Cause Courts Act, 1968, and not being court constituted under that Act are less than two hundred and fifty rupees, the High Court may empower such court to award, as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided, further, that the High Court may limit amount which any Court or class of Courts is empowered to

award as costs under this section.

(3) No person against whom any order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made

by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

PART II.

EXECUTION.

General.

- 36. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution Application to orders, of orders.
- 37. The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is of Court which passed a decree. anything repugnant in the subject or context, be deemed to include.—

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance,

and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Court by which decrees may be executed.

38. A decree may be executed either by the Court which court by which decree passed it, or by the Court to which it is sent for execution.

39. (I) The Court which passed a decree may, on the application of the decree-holder, send it for

execution to another Court,-

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the

local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the

decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

40. Omitted.

Result of execution shall certify to the Court which passed it proceedings to be certifithe fact of such execution, or where the former Court fails to execute the same, the circumstances attending such failure.

42. The Court executing a decree sent to it shall have the

Powers of Court in excuting transferred decree. if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

State Coart in Pooneh may be executed in [* * *] Pooneh and vice rersa.

43. A decree passed by a State Court may be executed in [* * *] Pooneh and vice versa.

"In section 43 words "Bhadarwah or" deleted side Act II of 1997 published in Government Gazette dated 21st Baisakh, 1997. Gazette, declare that the decrees of any Gazette, declare that the decrees of any Civil or Revenue Courts situate in British India or States.

General in Council outside British India or of any Court in the territories of any Indian Prince or State in alliance with His Majesty and not established or continued by the authority of the Governor-General in Council, or any class of such decrees, may be executed in the State as if they had been passed by the Courts of the State and in the manner herein provided.

45. So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in the State to send a decree for execution to any Court in British India or established or continued by the authority of the Governor-General in Council in the territories of any Indian Prince or State to which the Governor-General in Council has, by notification in the Gazette of India, declared the provisions contained in this section to apply or to any Court established by the authority of any Indian Prince or State to which the Indian Prince or State concerned has declared the provisions contained in this section to apply.

46. (1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and

specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the

attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

Questions to be determined by Court executing Decree.

Questions to be deter. suit in which the decree was passed, or mined by the Court exe their representatives, and relating to the execution, discharge or satisfaction of the

decree, shall be determined by the Court executing the decree

and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation.—For the purposes of this section, a plain-tiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

Limit of time for execution.

48. (1) Where an application to execute a decree not being a decree granting an injunction has Execution barred in been made, no order for the execution of certain cases. the same decree shall be made upon any fresh application presented after the expiration of twelve years from-

(a) the date of the decree sought to be executed, or, (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made, at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

(a) to preclude the Court nom ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force prevented the execution of the decree at some time within twelve years immediately before the date or the application; or

(b) Omitted.

Transferees and legal representatives.

Every transferee of a decree shall hold the same subject to the equities (if any) which the judg-Transferee. ment-debtor might have enforced against the original decree-holder.

50. (I) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which pass-Legal representative. ed it to execute the same against the legal

representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

Procedure in execution.

51. Subject to such conditions and limitations as may Powers of Court to en- be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by sale without attachment of any property;

(c) by arrest and detention in prison;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief

granted may require.

Provided that where the decree is for the payment of money execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons recorded in writing is satisfied-

(a) that the judgment-debtor, with the object or effect

of obstructing or delaying the execution of the decree;

(i) is likely to abscond or leave the local limits of the

jurisdiction of the court, or

(ii) has, after the institution of the suit or within one year prior to such institution in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property or

(b) that the judgment-debtor has or has had since the date of the decree the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has

refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-

debtor was bound in a fiduciary capacity to account.

Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (b) there shall be left out of account any property which by or under any law

Proviso to section 51 added vide Act VI of 1995 published in Government Gazette dated 17th Har 1995.

or custom having the force of law for the time being in force is exempt rem at achment in execution of the decree.]

Fnforcement of decree legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

property.

Liability of ancestral property.

Liability of ancestral property.

Liability of ancestral property.

Liability of ancestral dant which is liable under Hindu law for the payment of the debt of deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

Partition of estate or separation of as separate of the partition of the estate or the separation of the estate or the separation of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in his behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estate.

Arrest and detention.

tion of a decree at any hour and on any day, and shall as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which '[the Government] may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly, that, for the purpose of making an arrest under this section no dwelling-house shall be entered after

sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any rooms in which he has reason to believe the judgment-debtor is to be be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgement-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose

of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting

him, such officer shall at once release him.

(2) '[The Government] may, by notification in the Government Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be

prescribed by '[the Government] in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply under the law for the relief of insolvent judgment-debtor under the law and that he will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

²(4) Repealed.

Prohibition of arrest or shall not order the arrest or detention in the civil prison of a woman in execution of a decree for money.

57. '[The Government] may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistance of judgment-debtors.

¹See footnote under section 2 (7).

²Repealed vide Act IV of 1988 published in Government Gazette dated 18th Har 1988.

- 58. (a) Every person detained in the civil prison in execution of a decree shall be so detained,
- (a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and,

(b) in any other case for a period of six weeks:

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be;

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison,

or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application

he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistance allowance:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii) without the order of of the Court.

(2) A judgment debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

59. (I) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him, if in its opinion he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the

civil prison, he may be released therefrom

(a) by '[the Government] on the ground of the existence

of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

Attachment.

60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, Property liable to attachment and sale in money, bank notes, cheques, bills of exexecution of decree. change, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable

to such attachment or sale, namely:-

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman; such as the gold

nose ring of a woman during coverture.

(b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

'[(bb) one milch cow and her calf, the latter only so

long as it is necessary for milching the cow.]

(c) the residential house and houses used for agricultural purposes (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist;

(c. I) houses of Kamins of a village;

(c. 2) Araziat maqbuza assamian maurusi wa malikan; but not an arazi malyari Sagzari in Srinagar, which is exempted from payment of revenue;

²[Explanation.—Araziat maqbuza assamian malikan include lands held by owners and occupancy tenants

whether cultivated directly or through tenants at will.]

Clause (bb) added vide Act VI of 1995 published in Government Gazette dated 17th Har 1995.

This shall not apply to attachment already made prior to the date on which this Act came into force

*Explanation added wide Act III of 1993 published in Government Gazette dated 2nd Joth 1993.

(c. 3) Such portions of the house sought to be attached as may be necessary for the residence of the widow of a judgment-debtor:

Provided, firstly, that accommodation is not available in some other house forming part of the estate of the deceased;

Secondly, that the reservation is to be only for life-time of the widow and during her widowhood and that she would have no right to make any transfer by mortgage sale or otherwise.

(c. 4) A gharat or water-mill for grinding corn;

(c. 5) A kathar or a sandug-i-Shali;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the

Government, and political pensions;

(h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty;

(i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while

on duty, to the extent of-

(i) the whole of the salary, where the salary does not exceed '[thirty] rupees monthly, or where it is the salary of a village patwari, kanungo, zaildar or other village officer;

(ii) '[thirty] rupees monthly, where the salary exceeds '[thirty] rupees and does not exceed '[sixty]

rupees monthly; and

(iii) one moity of the salary in any other case;

²[Provided that where the whole or any part of the portion of such salary liable to attachment has been under attachment whether continuously or intermittently for a total period of 24 months such portion shall be exempt from attachment until the expiry of a further period of 12 months.]

(j) Omitted.

(k) Omitted. (l) the wages of labourers and domestic servants whe-

ther payable in money or in kind;

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) Omitted.

^{*}Substituted vide Act IV of 1988 published in Government Gazette dated 18th Har 1988. Proviso to clause (i) was added vide Act VI of 1995 published in Government Gazette dated 17th Har 1995. This shall not apply to attachment already ordered prior to the date on which this Act comes into force.

(p) where the judgment-debtor is a person liable for the payment of land revenue, any moveable preperty which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

'[(q) one moiety of the Illaqa or Jagir income of any

Illaqadar or Jagirdar.]

Explanation .- The particulars mentioned in clauses (g), (h), (i) and (l) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this section shall be deemed-

(a) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land, or

(b) to affect the provisions of the standing orders for the Kashmir Army or of any similar law for the time being in

force.

61. ²[The Government] may, by general or special order published in the Government Gazette, declare that such portion of agricultural pro-Partial exemption duce, or of any class of agricultural proagricultural produce. duce, as may appear to 2[the Government] to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgmentdebtor and his family, shall, in the case of all agriculturists, or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

62. (1) No person executing any process under this Code directing or authorising seizure of Seizure of property in moveable property shall enter any dwelldwelling-house. ing-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty

Clause (q) added vide Act IX of 1990 published in Government Gazette dated 2nd Chet 1990. See footnote under section 2 (7).

to withdraw; and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

63. (I) Where property not in the custody of any Court

Property attached in execution of decrees of several Courts.

is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realise such property and shall determine any claim thereto and

any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

- (2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.
- 64. Where an attachment has been made, any private transfer or delivery of the property attach-Private alienation of ed or of any interest therein and any payproperty after attachment to be void. ment to the judgment debtor of debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Explanation.—For the purposes of this section, claims enforceable under an attachment include claims for the rate-

able distribution of assets.

Sale.

65. Where immoveable property is sold in execution of a decree and such sale has become absolute, Purchaser's title. the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

66. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be pres-Suit against purchaser not maintainable on cribed on the ground that the purchase was ground of purchase being made on behalf of the plaintiff or on beon behalf of plaintiff.

half of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Fower for Government Government Gazette, make rules for any local area imposing conditions in respect of land in execution of decrees for payment of money.

Government Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of of money, where such interests are so un-

certain or undetermined as, in the opinion of '[the Govern-

ment], to make it impossible to fix their value.

(2) When on the date on which this Code comes into operation, any special rules as to sale of land in execution of decrees are in force in any local area, '[the Government] may, by notification in the Government Gazette, declare such rules to be in force, or may, by a like notification, modify the same.

Every notification issued in the exercise of powers under this sub-section shall set out the rules so continued or modi-

fied.

Delegation to Collector of power to execute decrees against immoveable property.

68. '[The Government] may, declare, by notification in the Government Gazette, that in any local area the execution of decrees in cases in Power to prescribe rules for transferring to which a Court has ordered any immove-Collector execution of able property to be sold, or the execution certain decrees. of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of , or interest in, immoveable property, shall be transferred to the Collector. From the day on which this Act comes into force, no decree shall be transferred to the Collector unless and until 1 [the Government] has made a declaration as required by this section.

69. The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the

last preceding section.

70. (I) '[The Government] may make rules consistent with the aforesaid provisions—

(a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court;

(b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof.had not been transferred to the Collector;

(c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders made on appeal with respect to such orders, being subject to appeal to, and revision by, superior revenue-authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

(2) A power conferred by rules made under sub-section (1) upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exerciseable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

71. In executing a decree transferred to the Collector under section 68 the Collector and his subordinates shall be deemed to be acting judicially.

Where Court may under section 68 is in force the property authorise ollector tostay attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorise the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far

as they are applicable.

Distribution of assets.

Proceeds of execution sons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payholders.

judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realisation, shall be

rateably distributed among all such persons.

Provided as follows:-

(a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled

to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold:

(c) where any immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the amount due under the decree;

thirdly, in discharging the interest and principal moneys

due on subsequent incumbrances (if any); and,

fourthly, rateably among the holders of decrees for the payment of money against the judgement-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person

to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

Resistance to execution.

Resistance to execu. cree for the possession of immoveable property or that the purchaser of immoveable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thrity days and may further direct that the decree-holder or purchaser be put into possession of the property.

PART III.

"INCIDENTAL PROCEEDINGS.

Commissions.

- Power of Court to be prescribed, the Court may issue a comissue commission.

 To. Subject to such conditions and limitations as may
 be prescribed, the Court may issue a commission—
 - (a) to examine any person;
 - (b) to make a local investigation;
 - (c) to examine or adjust accounts; or
 - (d) to make a partition.
- 76. (1) A commission for the examination of a person counties on to any be issued to any private person or to any Court in the State or to any Court not being High Court, situate in British India or beyond the limits of British India but continued by the authority of His Majesty or of the Governor General of India in Council, or to a Court situate in any part of the British Empire other than British India, or to a Court of any foreign country for the time being in alliance with His Majesty.
- (2) Every Court receiving a commission for the examination of any person under sub-section (I) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be
- 77. In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within the State.
- 78. [Subject to such conditions and limitations as may be prescribed] the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions
- (a) Courts situate in or beyond the limits of British India and established or continued by the authority of His Majesty or of the Governor General in Council, or
 - (b) Courts situate in any part of the British Empire
- other than British India, or (c) Courts of any foreign country. 2[* * *]
- Words in brackets inserted vide Act VI of 1995 published in Government Gazette dated

17th Har 1995.
"Words "for the time being in alliance with His Majesty" omitted vide Act VI of 1995, published in Government Gazette dated 17th Her 1995.

PART IV. S. N. DAR, S. A. LL. S.: Vakil High Court,

SUITS IN PARTICULAR GASES! TIME . Kashmir!

Suits by or against the Government or Public Officers in their official capacity.

79. (I) Suits by or against the State shall be instituted by or against the '[Judicial Minister, Government, Jammu and Kashmir].

(2) Omitted.

80. No suit shall be instituted against the State, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of four months next after notice in writing has been, in the case of the State, delivered to, or left at the office of, '[Judicial Minister, His Highness' Government, Jammu and Kashmir], and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

81. In a suit instituted against a public officer in respect of any act purporting to be done by him in

and personal appearance. his official capacity—

(a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,

(b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person

82. (I) Where the decree is against the '[Judicial Minister, His Highress' Government, Jammu and Kashmir] or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall

"Substituted vide Notification 3-L/86 as amended by Council Order 46 of 1935 published in Government Gazette dated 7th Bhadon 1986 and 10th Phagan 1991 respectively. At first such notices were given to the Chief Minister. Constitutional changes necessitated change in law also and "Secretary Jamma and Kashmir State Council" was substituted for "Chief Minister" vide Notification No. 2, dated 17th October 1922 published in Government Gazette dated 7th Katik 1979. Later on Minister-in-Waiting was authorised to dispose of such notices, vide Notification No. 6-L/84 published in Government Gazette dated 17th Jeth 1984. This Notification was however repealed by Notification No. 3-L/86 which is the law at present as amended by Council Order 46 of 1935.

report the case for the orders of '[the Government].

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

Suits by Aliens and by or against Foreign and Native Rulers.

When aliens may sue. and no subject of an enemy country shall sue in any of the State Courts, except

with the permission of His Highness.

Explanation.—Every person residing in a country the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a licence in that behalf under the hand of one of His Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of this section be deemed to be an alien enemy.

84. The British Government and its subjects and a Foreign State in alliance with His Majesty the King Emperor and its subjects shall be entitled to sue in a State Court.

85. (1) Persons specially appointed by order of the Gov-

Persons specially appointed by Government to prosecute or defend for Princes or Chiefs. ernment at the request of any Soverign Prince or Ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, or the State or

at the request of any person competent, in the opinion of the Government, to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

(3) A person appointed under this section may authorise or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

86. (1) Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, with the consent of His Highness, certified by the Suits against Princes, signature of '[Judicial Minister, His High-Chiefs, amhassadors and ness, Government Jammu and Kashmir], but envoys. not without such consent, be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless it appears to he Government that the Prince, Chief, ambassador or envoy-

(a) has instituted a suit in the Court against the person

desiring to sue him, or

(b) by himself or another trades within the local limits

of the jurisdiction of the Court, or

(c) is in possession of immoveable property situate within those limits and is to be sued with reference to such pro-

perty or for money charged thereon.

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of His Highness certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

(4) Omitted.

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.

87. A Soverign Prince or Ruling Chief, may sue, and shall be sued, in the name of his State: Style of Princes and

Objet as parties to suits.

Provided that in giving the consent referred to in the foregoing section His Highness may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

Interpleader

88. Where two or more persons claim adversely to one another the same debt, sum of money or Where interpleader other property, moveable or immoveable, suit may be instituted. from another person, who claims no inter-

^{*}Substituted vids Notification 3-L/86 amended by council order 46 of 1935 published in Government Guzette dated 7th Bhadon 1936 and Government Gazette dated 10th Phagan 1991 respectively.

est therein other than for charges or costs and who is ready to pay or deliver it to the righful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of

interpleader shall be institued.

PART V.

SPECIAL PROCEEDINGS.

Arbitration.

- Arbitration.

 Ar
- (2) The provisions of the Second Schedule shall not affect any arbitration pending at the commencement of this Code, but shall apply to any arbitration after that date under any agreement or reference made before the commencement of this Code.

Special Case.

90. Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

Suits relating to Public Matters.

Public nulsance.

In the case of a public nuisance the State Advocate or the Governor, or two or more persons having obtained the consent in writing of the Governor, may institue a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independ-

ently of its provisions.

92. (I) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, Public charities. or where the direction of the Court is deemed necessary for the administration of any such trust, the State Advocate or Governor, or two or more persons having an interest in the trust and having obtained the consent in writing of the Governor may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by '[the Government] within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-

(a) removing any trustee;

(b) appointing a new trustee; (c) vesting any property in a trustee;

d) directing accounts and inquiries;

e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust:

(f) authorising the whole or any part of the trust-

property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature

of the case may require.

- (3) Save as provided by the Religious Endowments Act, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that subsection.
 - 93. Omitted.

PART VI.

SUPPLEMENTAL PROCEEDINGS.

94. In order to prevent the ends of justice from being defeated the Court may, if it is so prescrib-Supplemental proceedings.

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property; (c) grant a temporary injunction and in case of

disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold:

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may

appear to the Court to be just and convenient.

95. (1) Where, in any suit in which an arrest or attachment has been effected or a temporary in-Compesation for obtainjunction granted under the last preceding ing arrest, attachment or injuction on insufficient section, grounds.

(a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for

instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

PART VII.

APPEALS.

Appeals from Original Decrees.

96. (1) Save where otherwise expressly provided in the body of this Code or by any other law for Appeal from original the time being in force, an appeal shall lie decree. from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed

ex parte. (3) No appeal shall lie from a decree passed by the Court with the consent of parties.

97. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he Appeal from final decree where no appeal from shall be precluded from preliminary decree. correctness in any appeal which may be preferred from final decree.

99. No decree shall be reversed or substantially varied, on account of any misjoinder of parties or No decree to be reversed causes of action or any error, defect or iror modified for error or regularity in any proceedings in the suit, irregularity not effecting merits or jurisdiction. not affecting the merits of the case or the jurisdiction of the Court.

Appeals from Appellate Decrees.

(I) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall Second appeal. lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely:-

(a) the decision being contrary to law or to some usage

having the force of law;

(b) the decision having failed to determine some mater-

ial issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the

decision of the case upon the merits;

J'[(d) Where the decision of the first Court in a suit in which the value of the subject-matter exceeds Rs. 100 has been varied or reversed by the lower appellate Court, on the ground that the decision is against the weight of the evidence in the case.]

(2) An appeal may lie under this section from an appel-

late decree passed ex parie

101. No second appeal shall lie except Second appeal on no other grounds. on the grounds mentioned in section 100.

No second appeal shall lie in any suit of the nature 102. cognizable by Courts of Small Causes, appeal in certain suits. when the amount or value of the subjectmatter of the original suit does not exceed five hundred rupees.

Power of High Court to determine issues of fact.

The lower appellate Court.

Second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal but not determined by the lower appellate Court.

Appeals from Orders.

Orders from which appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force from no other order:—

(a) an order superseding an arbitration where the award has not been completed within the period allowed by the Court;

(b) an order on an award stated in the form of a special case;

(c) an order modifying or correcting an award;

(d) an order filing or refusing to file an agreement to refer to arbitration;

(e) an order staying or refusing to stay a suit where

there is an agreement to refer to arbitration;

(f) an order filing or refusing to file an award in an arbitration without the intervention of the Court;

'[(ff) an order under section 35-A.]

(g) an order under section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal

is expressly allowed by rules.

¹[Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order or an order for payment of a less amount, ought to have been made.]

(2) No appeal shall lie from any order passed in appeal

under this section.

other orders.

Other orders.

Other orders.

Other orders.

Other orders.

Other orders.

Deal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

^{*}Clause (f') and provise to clause (i) inserted vide Act IV of 1988 published in Government Gazette dated 18th Har 1988.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

What Courts to hear lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction,

then to the High Court.

General provisions relating to Appeals.

107. (I) Subject to such conditions and limitations as Powers of Appellate may be prescribed, an Appellate Court shall have power—

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evi-

dence to be taken.

- (2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.
- 108. The provisions of this Part relating to appeals from Procedure in appeals original decrees shall, so far as may, apply from appellate decrees to appeals—

 to appeals—

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

¹109. Repealed. Repealed. Repealed. Repealed.

shall be deemed—
to bar the full and unqualified exercise of His Highness' pleasure in receiving or rejecting appeals to His Highness or otherwise howsoever.

Government Gazette dated 8th Bhadon 1985.

PART VIII.

REFERENCE, REVIEW AND REVISION.

113. Subject to such conditions and limitations as may Reference to High be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

114. Subject as aforesaid, any person considering himself aggrieved-Review.

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allow-

ed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such

order thereon as it thinks fit.

115. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in Revision. which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by

law, or

(b) to have failed to exercise a jurisdiction so vested,

(c) to have acted in the exercise of its jurisdiction or illegally or with material irregularity, or

[(d) to have caused failure of justice] the High Court may make such order in the case as it thinks fit.

PART IX.

SPECIAL PROVISION RELATING TO THE HIGH COURT.

116. This part applies only to the High Court.

Part to apply only to High Court

'Substituted for the words "to have failed to do substantial justice or to have caused failure of justice" vide Notification No. 1, dated 30th Baisakh, 1978 published in the Part IX inserted vide Notification 3-L/1985 published in Government Gazette Government Gazette dated 17th Jeth 1978.

dated 8th Bhadon 1985.

117. Save as provided in this Part or in Part X or in Application of Code rules, the provisions of this Code shall apply to the High Court.

118. Where the High Court considers it necessary that a decree passed in the exercise of its origi-

before ascertainment before the amount of the costs incurred in the suit can be ascertained by taxation

the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs

shall be ascertained by taxation.

Unauthorised persons not to address Court.

Unauthorised persons the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of its powers authorised him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

120. The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17

original civil jurisdic- and 20.

PART X.

RULES.

121. The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

Power of High Court may, from time to time after previous publication, make rules regulating its own procedure and the procedure of the Civil Courts subject to its superintendence and may by such rules annul, alter, or add to all or any of the rules in the First Schedule].

123. Omitted. 124. Omitted.

125. Omitted.

Section 122 aubstituted vide Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985,

¹[126. Rules made under the foregoing provision shall be subject to the previous approval of Rules subject to sanc. His Highness. tion.

so made and approved shall be published **127.** Rules in the Jammu and Kashmir Government Gazette, and shall from the date of publi-Publication of rules. cation or from such other date as may be specified have the same force and effect, as if they had been contained in the First Schedule.

128. (1) Such rules shall be not inconsistent with the Matters for which rules provisions in the body of this Code, but, subject thereto, may provide for any matmay provide. ters relating to the procedure of Civil Courts.

(2) In particular and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely:-

(a) the service of summonses, notices and other processes by post or in any other manner either generally or in any

specified areas, and the proof of such service;

(b) the maintenance and custody, while under attachment, of live-stock and other moveable property, the fees payable for such maintenance and custody, the sale of such livestock and property, and the proceeds of such sale;

(c) procedure in suits by way of counterclaim, and the

valuation of such suits for the purposes of jurisdiction;

(d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;

(e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether

a party to the suit or not;

(f) Omitted.

(g) Omitted (h) Consolidation of suits, appeals and other proceedings;

(i) delegat on to the Registrar, Deputy Registrar or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the

business of Civil Courts.

129. Notwithstanding anything in this Code, the High Court may make such rules not inconsistent with the 'order of His Highness No. 1, Power of High Court to make rules as to its dated 26th March 1928, to regulate its own original civil jurisdiction.

Sections 126, 127, 128, 129, and 131 inserted vide notification 3-L/85 published in This order is repealed and replaced by Part IV of Act XIV of 1996. Government Gazette dated 8th Bhadon 1985.

procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall effect the validity of any such rules in force at the commencement of this Code.

130. Omitted.

131. Rules made in accordance with section 129 shall be publication of rules. Government Gazette and shall from the date of publication or from such other date as may be specified have the force of law.]

PART X

MISCELLANEOUS.

Exemption of certain manners of the country, ought not to be compension of certain compelled to appear in public shall be exempted appearance. empt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this

Code.

133. (I) His Highness may, by notification in the State Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of His Highness, entitles him to the privilege of exemption.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by His Highness and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his said.

unless the party requiring his evidence pays such costs.

Arrest other then in so far as may be, to all persons arrested under this Code.

135. (I) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil prowhile going to, presiding in, or returning from, his Court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believeing in good faith that it has

such jurisdiction, the parties thereto their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

- (3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.
- 1[135-A. (I) No person shall be liable to arrest or de-Exemption of members of Legislative Assembly from arrest and detention under civil process.

(a) if he is a member of the Jammu and Kashmir ²Assembly, during the continuance of any meeting of such ²Assembly;

(b) if he is a member of any Committee of the 'Assembly, during the continuance of any meeting of such Committee;

and

during the 14 days before and after such meeting.

(i) shall, subject to the provisions of the said sub-section be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provision of sub-section (I).]

136. (I) Where an application is made that any person

Procedure where person to be arrested or property to be attached is outside district. shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the

application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court, shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own

Section 135-A added wide Act VIII of 1991 published in Government Gazette dated 15th Bhadon 1991.
*Praja Sabha.

officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

(4) Omitted.

137. (I) The language which, on the commencement of of this Code, is the language of any Court subordinate to the High Court shall continue to be the language of such subordinate Court until '[the Government] otherwise direct.

(2) '[The Government] may delcare what shall be the language of any such Court and in what character applications

to and proceedings in such Courts shall be written.

(3) Where this Code requires or allowes anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

138. (I) The High Court may, by notification in the Government Gazette, direct with respect to require evidence to be recorded in English or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English

language and in manner prescribed.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

Oath or affidavit by 139. In the case of any affidavit under

whom to be administ this Code—

(a) any Court or Magistrate, or

(b) any officer or other person whom the High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which '[the Government] has generally or specially empowered in this behalf,

may administer the oath to the deponent.

140. Omitted.

The procedure provided in this Code in regard to 141. suits shall be followed, as far as it can be Miscellaneuos proceedmade applicable, in all proceedings in any ings. Court of civil jurisdiction.

142. All orders and notices served on or given to any person under the provisions of this Code shall

Orders and notices to be in writing. be in writing.

Postage, where chargeable on a notice, summons or letter issued under this Code and for-Postage. warded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:

Provided that '[the Government] may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be

levied in lieu thereof.

144. (1) Where and in so far as a decree is varied or reversed, the Court of first instance shall, Application for resti. on the appplication of any party entitled tution. to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by appli-

cation under sub-section (1).

liable as become has 145. Where any person Enforcement of liabili- surety-

ty of surety.

(a) for the performance of any decree or any part thereof, or

(b) for the restitution of any property taken in execu-

tion of a decree, or (c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the pruposes of appeal, be deemed a party within the meaning of section 47:

Provided that such notice as the Court in each case thinks

sufficient has been given to the surety.

146. Save as otherwise provided by this Code or by any law to the time being in force, where any against representatives. proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

147. In all suits to which any person under disability Consent or agreement is a party, any consent or agreement, as by persons under to any proceeding shall, if given or made with the express to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement.

148. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its time to time, enlarge such period, even though the period originally fixed or granted may have

expired.

149. Where the whole or any part of any fee prescribed Power to make up for any document by the law for the time deficiency of court-fees. being in torce relations to the law for the time being in torce relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-tee; and upon such payment the document in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

150. Save as otherwise provided, where the business of any Court is transferred to any other Transfer of business Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business

was so transferred.

151. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Saving of inherent Court to make such orders as may be necespowers of Court. sary for the ends of justice or to prevent abuse of the process of the Court.

or arithmetical mistakes in judgments, decrees or orders. or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court Amendment of judgments, decrees or orders. either of its own motion or on the application of any of the parties.

153. The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceed-General power amend. ing in a suit; and all necessary amendments shall be made for the purpose of determining the real question

or issue raised by or depending on such proceeding.

154. Nothing in this Code shall affect any present right saving of present right of appeal which shall have accrued to any of appeal. party at its commencement.

Omitted. 155 and 156.

157. Notifications published, declarations and rules made,

Continuance of orders certain enactunder ments.

places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under any enactment relating to matters dealt with in this Code

shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

Reference to certain enactment relating to matters dealt with in this code.

158. In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any chapter such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order,

section or rule.

THE FIRST SCHEDULE.

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RULE.

ORDER I.

Parties to Suits.

- Who may be joined as plaintiffs.
- Power of Court to order separate trials.
- Who may be joined as defendants.
- Court may give judgment for or against one or more of joint parties.
- Defendant need not be interested in all the relief claimed.
- 6. Joinder of parties liable on same contract.
- When plaintiff in doubt from whom redress is to be sought.
- One person may sue or defend on behalf of all in same interest.
- 9. Misjoinder and nonjoinder.
- 10. Suit in name of wrong plaintiff.

Court may strike out or add parties.

Where defendant added, plaint to be amended.

- 11. Conduct of suit.
- Appearance of one of several plaintiffs or defendants for others.
- Objections as to nonjoinder or misjoinder.

ORDER II.

Frame of Suit.

- Frame of suit.
- 2. Suit to include the whole claim.

Relinquishment of part of claim.

- Omission to sue for one of several reliefs.
- 3. Joinder of causes of action.
- Only certain claims to be joined for recovery of immovable property.
- Claims by or against executor, administrator or heir.
- Power of Court to order separate trials.
- 7. Objections as to misjoinder.

ORDER III.

Recognized Agents and Pleaders.

- Appearances, etc., may be in person, by recognized agent or by pleader.
- 2. Recognized agents.
- 3. Service of process on recognized agent.
- 4. Appointment of pleader.
- 5. Service of process on pleader.
- 6. Agent to accept service.

Appointment to be in writing and to be filed in Court.

ORDER IV.

Institution of Suits.

- 1. Suit to be commenced by plaint.
- 2. Register of suits.

ORDER V.

Issue and Service of Summons.

Issue of Summons.

- 1. Summons.
- 2. Copy or statement annexed to summons.
- Court may order defendant or plaintiff to appear in person.
- No party to be ordered to appear in person unless resident within certain limits.
- Summons to be either to settle issues or for final disposal.
- Fixing day for appearance of defendant.
- Summons to order defendant to produce documents relied on by him.
- On issue of summons for final disposal, defendant to be directed to produce his witnesses.

Service of Summons.

- 9. Delivery or transmission of summons for service.
- 10. Mode of service.
- 11. Service on several defendants.
- 12. Service to be on defendant in

RULE.

- person when practicable, or on his agent.
- Service on agent by whom detendant carries on business.
- Service on agent in charge in suits for immovable property.
- Where service may be on male member of defendant's family.
- Person served to sign acknowledgment.
- 17. Procedure when defendant refuses to accept service, or cannot be found.
- Endorsement of time and manner of service.
- 19. Examination of serving officer.
- 20. Substituted service.

Effect of substituted service.

- Where service substituted, time for appearance to be fixed.
- 21. Service of summons where defendant resides within jurisdiction of another Court.
- 22. Omitted.
- 23. Duty of Court to which summons is sent.
- 24. Service on defendant in prison.
- 25. Service where defendant resides out of the State and has no agent.
- 26. Omitted.
- 27. Service on civil public officer or on servant of railway company or local authority.
- 28. Service on soldiers.

- Daty of person to whom summons is delivered or sent for service.
- Substitution of letter for summons.

ORDER VI.

Pleading generally.

- 1. Pleading.
- Pleading to state material facts and not evidence.
- 3. Form of pleading.
- Particulars to be given where necessary.
- 5 Further and better statement, or particulars.
- 6. Condition precedent.
- 7. Departure.
- 8. Denial of contract.
- Effect of document to be stated.
- 10. Malice, knowledge, etc.
- 11. Notice.
- 12. Implied contract, or relation.
- 13. Presumptions of law.
- 14. Pleading to be signed.
- 15. Verification of pleadings.
- 16. Striking out pleadings.

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- 17. Amendment of pleadings.
- 18. Failure to amend after order.

RULE.

ORDER VII.

Plaint.

- Particulars to be contained in plaint.
- 2. In money suits.
- Where the subject-matter of the suit is immoveable property.
- 4. When plaintiff sues as representative.
- Defendant's interest and liability to be shown.
- Grounds of exemption from limitation law.
- 7. Relief to be specifically stated.
- 8. Relief founded on separate grounds.
- Procedure on admitting plaint.
 Concise statements.
- Return of plaint.
 Procedure on returning plaint.
- 11. Rejection of plaint.
- 12. Procedure on rejecting plaint.
- Where rejection of plaint does not preclude presentation of fresh plaint.

Documents relied on in plaint.

 Production of document on which plaintiff sues.

List of other documents.

15. Statement in case of documents not in his possession or power.

- Suits on lost negotiable instruments.
- 17. Production of shop-book.

Original entry to be marked and returned.

 Inadmissibility of document not produced when plaint filed.

ORDER VIII.

Written Statement and Set-off.

- 1. Written statement.
- 2. New facts must be specially pleaded.
- 3. Denial to be specific.
- 4. Evasive denial.
- 5. Specific denial.
- Particulars of set-off to be given in written statement.

Effect of set-off.

- Defence or set-off founded on separate grounds.
- 8. New ground of defence.
- 9. Subsequent pleadings.
- Procedure when party fails to present written statement called for by Court.

ORDER IX.

Appearance of Parties and Consequence of Non-appearance.

 Parties to appear on day fixed in summons for defendant to appear and answer.

RULE.

- Dismissal of suit where sunmons not served in consequence of plaintiff's failure to pay costs.
- 3. Where neither party appears, suit to be dismissed.
- 4. Plaintiff may bring fresh suit or Court may restore suit to file.
- Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.
- 6. Procedure when only plaintiff appears.

When summons duly served.

When summons not duly served.

When summons served, but not in due time.

- Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous nonappearance.
- 8. Procedure where defendant only appears.
- Decree against plaintiff by default bars fresh suit.
- Procedure in case of non-attendance of one or more of several plaintiffs.
- Procedure in case of non-attendance of one or more of several defendants.
- 12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

Setting aside Decrees ex parte.

- Setting aside decree ex parte against defendant.
- No decree to be set aside without notice to opposite party.

ORDER X.

Examination of Parties by the Court.

- Ascertainment whether allegations in pleadings are admitted or denied.
- Oral examination of party, or companion of party.
- Substance of examination to be written.
- Consequence of refusal or inability of pleader to answer.

ORDER X1.

Discovery and Inspection.

- 1. Discovery by interrogatories.
- Particular interrogatories to be submitted.
- 3. Costs of interrogatories.
- 4. Form of interrogatories.
- 5. Corporations.
- Objections to interrogatories by answer.
- Setting aside and striking out interrogatories.
- 8. Affidavit in answer, filing.
- 9. Form of affidavit in answer.
- 10. No exception to be taken,

RULE.

- Order to answer or answer further.
- Application for discovery of documents.
- 13. Affidavit of documents.
- 14. Production of documents.
- Inspection of documents referred to in pleading or affidavits.
- 16. Notice to produce.
- Time for inspection when notice given.
- 18. Order for inspection.
- 19. Verified copies.
- 20. Premature discovery.
- Non-compliance with order for discovery.
- Using answers to interrogatories at trial.
- 23. Order to apply to minors.

ORDER XII.

Admissions.

- 1. Notice of admission of case.
- 2. Notice to admit documents.
- 3. Form of notice.
- 4. Notice to admit facts.
- 5. Form of admissions.
- 6. Judgment on admissions.
- 7. Affidavit of signature.
- 8. Notice to produce documents.
- 9. Costs.

ORDER XIII.

Production, Impounding and Return of Documents.

- Documentary evidence to be produced at first hearing.
- 2. Effect of non-production of documents.
- Rejection of irrelevant or inadmissible documents.
- 4. Endorsements on documents admitted in evidence.
- Endorsements on copies of admitted entries in books, accounts, and records.
- Endorsements on documents rejected as inadmissible in evidence.
- Recording of admitted and return of rejected documents.
- Court may order any document to be impounded.
- 9. Return of admitted documents.
- Court may send for papers from its own records or from other Courts.
 - Provisions as to documents applied to material objects.

ORDER XIV.

Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.

Framing of issues.

- 2. Issues of law and of fact.
- Materials from which issues may be framed.

RULE.

- 4. Court may examine witnesses or documents before framing issues.
- Power to amend, and strike out, issues.
- Questions of fact or law may by agreement be stated in form of issues.
- 7. Court, if satisfied that agreement was executed in good faith may pronounce judgment.

ORDER XV.

Disposal of the Suit at the first hearing.

- 1. Parties not at issue.
- One of several defendants not at issue.
- 3. Parties at issue.
- 4. Failure to produce evidence.

ORDER XV1.

Summoning and Attendance of Witnesses

- Summons to attend to give evidence or produce documents.
- Expenses of witness to be paid into Court on applying for summons.

Experts.

- · Scale of expenses.
- 3. Tender of expenses to witness.
- 4. Procedure where insufficient sum paid in.

Expenses of witnesses detained more than one day.

- Time, place and purpose of attendence to be specified in summons.
- 6. Summons to produce document.
- 7. Power to require persons present in Court to give evidence or produce document.
- 8. Summons how served.
- 9. Time for serving summons.
- Procedure where witness fails to comply with summons.
- If witness appears, attachment may be withdrawn.
- Procedure if witness fails to appear.
- 13. Mode of attachment.
- Court may of its of own accord summon as witnesses strangers to suit.
- Duty of persons summoned to give evidence or produce document.
- 16. When they may depart.
- 17. Application of rules 10 to 13.
- Procedure where witness apprehended cannot give evidence or produce document.
- No witness to be ordered to attend in person unless resident within certain limits.
- Consequence of refusal of party to give evidence when called on by Court.

RULE.

Rules as to witness to apply to parties summoned.

ORDER XVII.

Adjournments.

 Court may grant time and adjourn hearing.

Costs of adjournment.

- Procedure if parties fail to appear on day fixed.
- Court may proceed notwithstanding either party fails to produce evidence, etc.

ORDER XVIII.

Hearing of the Suit and Examination of Witnesses.

- 1. Right to begin.
- 2. Statement and Eproduction of evidence.
- 3. Evidence where several issues.
- Witnesses to be examined in open Court.
- How evidence shall be taken in appealable cases.
- When deposition to be interpreted.
- 7. Evidence under section 138.
- Memorandum when evidence not taken down by Judge.
- 9. When evidence may be taken in English.
- Any particular question and answer may be taken down.

- 11. Question objected to and allowed by Court.
- 12. Remarks on demeanour of witnesses.
- Memorandum of evidence in unappealable cases.
- Judge unable to make such memorandum to record reasons of his irability.
- Power to deal with evidence taken before another Judge.
- Power to examine witness immediately.
- 17. Court may recall and examine witness.
- 13. Power of Court to inspect.

ORDER XIX.

Affidavits.

- 1. Power to order any point to be proved by affidavit.
- Power te order attendance of deponent for cross-examinstion.
- Matters to which affidavits shall be confined.

ORDER XX.

Judgment and Decree.

- 1. Judgment when pronounced.
- 2. Power to pronounce judgment written by Judges' predecessor.
- 3. Judgment to be signed.
- 4. Judgments of Small Cause Courts.

RULE.

Judgments of other Courts.

11 1 1

- Court to state its decision on each issue.
- 6. Contents of decree.
- 7. Date of decree.
- 8. Procedure where Judge has vacated office before signing decree.
- 9. Decree for recovery of immoveable property.
- Decree for delivery of moveable property.
- Decree may direct payment by instalments.
 - Order, after decree, for payment by instalments.
- Decree for possession and mesne profits.
- 13. Decree in administration suit.
- 14. Decree in right of prior purchase suit.
- Decree in suit for dissolution of partnership.
- Decree in suit for account between principal and agent.
- 17. Special directions as to accounts.
- 18. Decree in suits for partition of property or separate possession of share therein.
- 19. Decree when set-off is allowed.

Appeal from decree relating to set-off.

20. Certified copies of judgment and decree to be furnished.

ORDER XXI.

Execution of Decrees and Orders,

Payment under Decree.

- Modes of paying money under decree.
- Payment out of Court to decreeholder.

Court executing Decrees.

- Lands situate in more than one jurisdiction.
- 4. Omitted.
- 5. Mode of transfer.
- Procedure where Court desires that its own decree shall be executed by another Court.
- Court receiving copies of decree, etc., to file same without proof.
- 8. Execution of decree or order by Court to which it is sent.
- 9. Omitted.

Application for execution.

- 10. Application for execution.
- 11. Oral application.

Written application.

- Application for attachment of moveable property not in judgment-debtor's possession.
- Application for attachment of immoveable property to contain certain particulars.
- 14. Power to require certified extract from Collector's register in certain cases.

RULE.

- Application for execution by joint decree-holder.
- Application for execution by transferee of decree.
- Procedure on receiving application for execution of decree.
- 18. Execution in case of cross_decrees.
- Execution in case of cross-claims under same decree.
- Cross-decree and cross-claims in mortgage-suits.
- 21. Simultaneous execution.
- 22. Notice to show cause against execution in cartain cases.
- 23. Procedure after issue of notice.

Process for execution.

- 24. Process for execution.
- Endorsement on process.

Stay of execution.

- 26. When Court may stay execution.
 - Power to require security from, or impose conditions upon, judgment-debtor.
- Liability of judgment-debtor discharged.
- 28. Order of Court which passed decree or of appellate Court to be binding upon Court applied to.
- 29, Stay of execution pending suit between decree-holder and judgment-debtor.

Mode of execution.

- 30. Decree for payment of money.
- Decree for specific moveable property.
- Decree for specific performance for restitution of conjugal rights or for an injunction.
- Discretion of Courts in executing decrees for restitution of conjugal rights.
- 34. Decree for execution of document, or endorsement of negotiable instrument.
- 35. Decree for immov able property.
- Decree for delivery of immoveable property when in occupancy of tenant.

Arrest and detention in the civil prison.

- 37. Discretionary power to permit judgement-debtor to show cause against detention in prison.
- 38. Warrant for arrest to direct judgement-debtor to be brought up.
- 39. Subsistence-allowance.
- Proceedings on appearance of judgement-debtor in obedience to notice or after arrest.

Attachment of property.

- 41. Examination of judgementdebtor as to his property.
- 42. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.
- 43. Attachment of moveable property, other than agricultural

RULE.

- produce, in possession of judgement-debtor.
- 44. Attachment of agricultural produce.
- 45. Provisions as to agricultural produce under attachment.
- 43. Attachment of debt, share and other property not in possession of judgement debtor.
- 47. Attachment of share in moveables.
- 48. Attachment of salary or allowances of public officer or servant of railway company.
- 49. Attachment of partnership property.
- 50. Execution of decree against firm.
- 51. Attachment of negotiable instruments.
- Attachment of property in custody of Court or public officer.
- 53. Attachment of decrees.
- 54. Attachment of immoveable property.
- 55. Removal of attachment after satisfaction of decree.
- 56. Order for payment of coin or currency notes to party entitled under decree.
- 57. Determination of attachment.

Investigation of claims and objections.

58. Investigation of claims to, and objections to attachment of, attached property.

Postponement of sale.

- 59. Evidence to be adduced by claimant.
- 60. Release of property from attachment.
- Disallowance of claim to property attached.
- 62. Jontinuance of attachment subject to claim of incumbrance.
- 63. Saving of suits to establish right to attached property.

Sale generally.

- attached to be sold and proceeds to be paid to person entitled.
- 65. Sale by whom conducted and how made.
- 66. Proclamation of sales by public auction.
- 67. Siode of making proclamation.
- 68 Time of sale
- Adjournment or stoppage of sale.
- 70. Saving of certain sales.
- Defaulting purchaser answerable for loss on re-sale.
- Decree-holder not to bid for or buy property without permission.
- Where decree-holder purchases, amount of decree may be taken as payment.
- 73. Restriction on bidding or purchase by officers.

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Sale of moveable property.

- 74. Sale of agricultural produce.
- Special povisions relating to growing crops.
- 76. Negotiable instrument and shares in corporation.
- 77. Sale by public auction.
- Irregularity not to vitiate sale but any person injured may use.
- Delivery of moveable property, debts and shares.
- Transfer of negotiable instruments and shares.
- Vesting order in case of other property.

Sale of immoveable poperty.

- 82. What Courts may order sales.
- 83. Postponement of sale to enable judgement-debtor to raise amount of decree.
- Deposit by purchaser and resale on default.
- Time for payment in full of purchase-money.
- Procedure in default of payment.
- 87. Notification on re-sale.
- Bid of co-sharer to have preference.
- Application to set aside sale on deposit.
- 90. Application to set aside sale on ground of irregularity or fraud.

- 91. Application by purchaser to set aside sale on ground of judgement-debtor having no saleable interest.
- 92. Sale when to become absolute or be set aside.
- 93. Return of purchase-money in certain cases.
- 94. Certificate to purchaser.
- 95. Delivery of property in occupancy of judgement-debtor.
- 96. Delivery of property in occupancy of tenant.

Resistance to delivery of possession to decree-holder or purchaser.

- 97. Resistance or obstruction to possession of immoveable property.
- 98. Resistance or obstruction by judgment-debtor.
- 99. Resistance or obstruction by bona fide claimant.
- Dispossession by decree-holder or purchaser.
- 101. Bona fide claimant to be restored to possession.
- 102. Rules not applicable to transferee lite pendente.
- 103. Orders conclusive subject to regular suit.

ORDER XXI A.

Insolvent Judgment-debtors.

- Power to apply for declaration of insolvency.
- 2. Contents of application.

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- 3. Subscription and verification of application.
- 4. Service of copy of application and notice.
- b. Power to serve other creditors.
- 6. Powers of Court as to judgment-debtor under arrest.
- 7. Procedure at hearing.
- 8. Declaration of insolvency and appointment of Receiver.
- 9. Creditors to prove their debts and schedule to be framed.
- Application by unscheduled creditors.
- 11. Effect of order appointing Receiver.
- 12. Receiver to give security and to collect assets.

Discharge of the insolvent.

- 13. Duty of Receiver.
- 14. Effect of discharge.
- Declaration that insolvent is discharged from such liability.
- 16. Procedure in case of dishonest applicant.
- Investment of other courts with powers of District Courts.

ORDER XXII.

Death, Marriage and Insolvency of Parties.

- 1. No abatement by party's death, if right to sue survives.
- 2. Procedure where one of several plaintiffs or defendants disa and right to sue survives.

- Procedure in case of death of one of several plaintiffs or of sole plaintiff.
- Procedure in case of death of one of several defendants or of sole defendant.
- Determination of question as to legal repsesentative.
- No abatement by reason of death after hearing.
- Suit not abated by marriage of female party.
- 8. When plaintiff's insolvency bars suit.

Procedure where assignee fails to continue suit or give security.

- 9. Effect of abatment or dismissal.
- Procedure in case of assignment before final order in suit.
- 11. Application of Order to appeals.
- Application of Order to proceedings.

ORDER XXIII.

Withdrawal and Adjustment of Suits.

- Withdrawl of suit or abandonment of part of claim.
- 2. Limitation law not affected by first suit.
- Compromise of suit.
- 4. Proceedings in execution of decrees not affected.

RULE.

ORDER XXIV.

Payment into Courts.

- 1. Deposit by defendant of amount in satisfaction of claim.
- 2. Notice of deposit.
- Interest on deposit not allowed to plaintiff after notice.
- 4. Procedure where plaintiff accepts deposit as satisfaction in part.

Procedure where he accepts it as satisfaction in full.

ORDER XAV.

Security for Costs.

- When security for costs may be required from plaintiff. Residence out of the State.
- Effect of failure to furnish security.

ORDER XXVI.

COMMISSIONS.

Commissions to examine witnesses.

- 1. Cases in which Court may issue commission to examine witness.
- 2. Order for commission.
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RULE.

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RULE.

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RULE.

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- 11. Right of meane mertgagee to redeem and foreclose.

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RULE.

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Arrest before judgment.

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- Exercise of powers in appeal from order made in execution of decree.

Procedure on admission of appeal.

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- 12. Day for hearing appeal.
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14. Publication and service of notice of day for hearing appeal.

Appellate Court may itself cause notice to be served.

15. Contents of notice.

rigital in

Procedure on hearing.

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- 18. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.
- Re-admi-sion of appeal dismissed for default.
- Power to adjourn hearing, and direct persons appearing interested to be made respondent.
- Re-hearing on application of respondent against whom zx parts decree made.
- Upon hearing, respondent may object to decree as if he had preferred separate appeal.

Form of objection and provisions applicable thereto.

- 23. Remand of case by Appellate Court.
- 24. Where evidence on record sufficient, Appellate Court may determine case finally.
- 25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.
- 26 Findings and evidence to be put on record.

Objections to finding.

Determination of appeal.

- 27. Production of additional evidence in Appellate Court
- 28. Mode of taking additionnal evidence.

regions so the comment of parties.

29. Points to be defined and recorded.

Judgment in appeal.

- Judgment when and where pronounc d.
- 31. Contents, date and signature of judgm nt.
- 32. What judgment may direct.
- 33. Power of Court of appeal.
- 34. Dissent to be recorded.

Decree in appeal

35. Dat- and contents of decr. e.

Judge dissenting from judgment need not sign decree.

- 36. Copies of judgment and decree to b furnished to parties.
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ORDER XLII.

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- 1. Appeals from orders.
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2. Inquiry into pauperism.

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- Reference of question to High Court.
- Court may pass decree contingent upon dicision of High Court.
- Judgment of High Court to be transmitted, and case disposed of accordingly.
- 4. Costs of reference to High Court.
- 5. Power to alter, etc., decree of Court making reference.
- 6. Power to refer to High Court question as to jurisdiction in small causes.
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- 1. Application for review of judgment.
- To whom applications for review may be made.
- 3. Form of applications for review.
- Application where rejected.
 Application where granted.
- Application for review in Court consisting of two or more judges.
- 6. Application where rejected.
- Order of rejection not appealable.
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- 2. Orders and notices how served.
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ORDER LI.

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APPENDICES TO THE FIRST SCHEDULE.

FORMS.

A .- PLEADINGS.

- 1. Title of suits.
- 2. Discription of parties in parti-
- 3. Plaints.
- 4. Written statements.
 - B.—PROCESS.
 - C .- DISCOVERY, INSPECTION AND ADMISSION.
- D .- DECREES.
- E.—EXECUTION.
- F .- SUPPLEMENTAL PROCEEDINGS.
- G.-APPEAL, REFERENCE AND REVIEW.
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THE FIRST SCHEDULE.

ORDER I.

PARTIES TO SUITS.

Who may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.

Power of Court to plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials

or make such other order as may be expedient.

ment.-

3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise.

4. Judgment may be given without any amend-

Court may give judgment for or against one or more of joint parties.

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabili-

ties.

- 5. It shall not be necessary that every defendant shall be interested in all the any suit against him.
- Joinder of parties the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

When plaintiff in doubt whom redress is to the person from whom redress is to may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

8. (I) Where there are numerous persons having the

One person may sue or defend on behalf of all in same interest. same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued or may defend, in such suit, on behalf of or for the benefit

of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(2) Any person on whose behalf or for whose benefit a a suit is instituted or defended under sub-rule (1) may apply

to the Court to be made a party to such suit.

9. No suit shall be defeated by reason of the misjoinder Misjoinder and non. or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the name of the name of the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) The Court may at any stage of the proceedings, either

upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name

of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the question involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any dis-

ability without his consent.

Where defendant is added, the plaint shall unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Limitation Act, section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of

the summons.

11. The Court may give the conduct of the suit to such person as it deems proper.

Appearance of one of several plaintiffs or defend ant for others.

Appearance of one of several plaintiffs or defend ant for others.

Appearance of one of several plaintiffs or defend ant for others.

In like manner, where there are more defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party

giving it and shall be filed in Court.

joinder of parties shall be taken at the earli
Objections to nonjoinder or misjoinder.

Objections to nonjoinest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER II.

FRAME OF SUIT.

1. Every suit shall as far as practicable be framed so as to afford ground for final decision upon the the subjects in dispute and to prevent further litigation concerning them.

2. (I) Every suit shall include the whole of the claim whole claim. which the plaintiff is entitled to make in respect of the cause of action; but a plain-

tiff may relinquish any portion of his claim in order to bring

the suit within the jurisdiction of any Court.

(2) Where a plaintiff omits to sue in respect of, or inten-Relinquishment of part tionally relinquishes any portion of his claim, he shall not afterwards sue in resof claim. pect of the portion so omitted or relinquished.

(3) A person entitled to more than one relief in respect of

the same cause of action may sue for all or any such reliefs; but if he omits, except Omission to sue for one with the leave of the Court, to sue for all of several reliefs. such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed res-

pectively to constitute but one cause of action.

Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

(1) Save as otherwise provided, a plaintiff may unite Joinder of causes of in the same suit several causes of action against the same defendant, or the same action. defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at

date of instituting the suits.

4. No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery Only certain claims to of immoveable property, exceptbe joined for recovery of immoveable property.

(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) claims for damages for breach of any contract under

which the property or any part thereof is held; and

(c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the Cliams by or against executor, administrator, mentioned claims are alleged to last or heir. arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

6. Where it appears to the Court that any causes of ac-Power of Court to order tion joined in one suit cannot be conveniently tried or disposed of together, the sepate trisls. Court may order separate trials or make such other order as

may be expedient.

7. All objections on the ground of mis-joinder of causes of action shall be taken at the earliest pos-Objections as to missible opportunity and, in all cases where joinder. issues are settled at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER III.

RECOGNISED AGENTS AND PLEADERS.

1. Any appearance, application or act in or to any Court, required or authorised by law to be made Appearances, etc., may or done by a party in such Court, may, be in person, by recogni -except where otherwise expressly provided ed agent or by pleader. by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, if the Court so

directs, be made by the party in person.

2. The recognised agents of parties by whom such appearances, applications and acts may be Recognised agents. made or done are-

(a) persons holding powers-of-attorney, authorising them to make and do such appearances, applications and acts on

behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or acts is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.

3. (1) Processes served on the recogni ed agent of a party shall be as effectual as if the same had been served on the party in person, unless Service of process on the Court otherwise directs. recognised agent.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognised

agent.

4. (1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be sign-Appointment of pleaed by such person or by his recognised der. agent or by some other person duly authorised by power-of-

attorney to act in this behalf.

(2) Every such appointment, when accepted by a pleader, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client.

(3) No advocate shall be entitled to make any application or act for any person unless he presents an appointment in writing, duly signed_by such person or his recognised agent or by some other agent duly authorised by power-of-attorney

to act in this behalf |.

5. Any process served on the pleader of any party or left at the office or ordinary residence of Service of process o such pleader, and whether the same is pleader. for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

(1) Besides the recognised agents described in rule 2 any person residing within the jurisdiction Agent to accept serof the Court may be appointed an agent vice.

to accept service of process.

(2) Such appointment may be special or general and shall be made by an instrument in writing signed Appointment to be in by the principal, and such instrument or, writing and to be filed in Court. if the appointment is general, a certified copy thereof shall be filed in Court. must be streson to require the per-

ORDER IV.

INSTITUTION OF SUITS.

1. (I) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained

in Orders VI and VII, so far as they are applicable.

2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

ORDER V.

ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

1. (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and

admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(a) in person, or(b) by a pleader duly instructed and able to answer all

material questions relating to the suit, or

(c) by a pleader accompanied by some person able to

answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

2. Every summons shall be accompanied by a copy of Copy or statement the plaint, or, if so permitted, by a con-

3. (I) Where the Court sees reason to require the personal appearance of the defendant, the sonal appearance of the defendant, the summons shall order him to appear in person son in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

No party shall be ordered to ap-

pear in person unless he resides-No party to be ordered to appear in person unless resident within

certain limits.

(a) within the local limits of the Court's ordinary origi-

nal jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two-hundred miles distance from the courthouse.

The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final Summons to be either to settle issues or for disposal of the suit; and the summons final disposal. shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the

suit.

6. The day for the appearance of the defendant shall be fixed with reference to the current busi-Fixing day for appearness of the Court, the place of residence of ance of defendant the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

7. The summons to appear and answer shall order the defendant to produce all documents in his Summons to order possession or power upon which he intends defendant to produce

to rely in support of his case. documents relied on by him,

Where the summons is for the the final disposal of the suit, it shall also direct the defendant On issue of summons to produce, on the day fixed for his appearfor final disposal, defenance, all witnesses upon whose evidence dant to be directed to he intends to rely in support of his case. produce his witnesses.

Service of Summons.

(I) Where the defendant resides within the jurisdiction of the Court in which the suit is insti-Delivery or transmistuted, or has an agent resident within that sion of summons for -SDIVIOS jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such

other manner as the Court may direct.

Mode of service.

Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

11. Save as otherwise prescribed, where there are more dervice on several de defendants than one, service of the sumfendants.

mons shall be made on each defendant.

Service to be on defondant in person when an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such

person within such limits, shall be deemed good service.

Service on agents in perty, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the property.

Where service may be and has no agent empowered to accept service fendant's family.

Where service may be and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.

of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledge-

ment of service endorsed on the original summons.

17. Where the defendant or his agent or such other per-

Procedure when defendant refuses to accept service, or cannot be found. son as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent, empowered to accept service of the summons on his behalf, nor any other per-

son on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

18. The serving officer shall, in all cases in which the

Endorsement of time endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person,

(if any) identifying the person served and witnessing the de-

livery or tender of the summons.

Court shall, if the return under that rule has not been verified by the affidavit of the serving officer and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

20. (I) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by

nary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Courthouse, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(2) Service substituted by order of the Court shall be as

Effect of substituted effectual as if it had been made on the deservice-

fendant personally.

- (3) Where service is substitued by order of the Court, where service substituted, time for appearance of the defendant as the case may ance to be fixed.

 The Court shall fix such time for the appearance of the defendant as the case may require.
- 21. A summons may be sent by the Court by which it is issued, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.
 - 22. Omitted.
- 23. The Court to which a summons is sent under rule
 21 shall, upon receipt thereof, proceed as
 which summons is sent.

 of issue, together with the record (if any) of its proceedings with regard thereto.

24. Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

Service where defendant resides out of the State and has no agent in the State empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

26. Omitted.

Service on civil public officer or on servant of ty, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

28. Where the defendant is a soldier, the Court shall send the summons for service to his commanding officer together with a copy to be retained

29. (I) Where a summons is delivered or sent to any person for service under rule 24, rule 27 person for service under rule 24, rule 27 or rule 28, such person shall be bound to service.

Serve it, if possible, and to return it under his signature, with the written aknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the sum-

mons shall be retunred to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. (I) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons
a letter singed by the Judge or such officer
as he may appoint in this behalf, where the
defendant is, in the opinion of the Court of a rank entitling him
to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in

all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

ORDER VI.

PLEADING GENERALLY.

Pleading. 1. "Pleading" shall mean plaint or written statement.

Statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.

3. The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be

used for all pleadings.

A. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified ecessary) shall be stated in the pleading.

Further and better claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise as may be just

6. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be, and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

7. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the

previous pleadings of the party pleading the same.

8. Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

9. Wherever the contents of any document are material, Effect of document to it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

10. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition Malice, knowledge etc. of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Notice.

Notice.

Son of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more con-

tracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

13. Neither party need in any pleading allege any matter of a fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

14. Every pleading shall be signed by the party and his

pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the

pleading, it may be, signed by any person duly authorised by

him to sign the same or to sue or defend on his behalf.

Verification of plea. time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information

received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it

was signed.

16. The Court may at any stage of the proceedings order striking out plead to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

low either party to alter or amend his pleadings.

Amendment of pleasings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

ORDER VII.

PLAINT.

Particulars to be containd in plaint.

1. The plaint shall contain the following particulars:—

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) where the plaintiff or the defendant is a minor or

a person of unsound mind, a statement to that effect;

(e) the facts constituting the cause of action and when

(f) the fact showing that the Court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far

as the case admits.

2. Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed:

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.

3. Where the subject-matter of the suit is immoveable

Where the subject cription of the property sufficient to moveable property. identified by boundaries or numbers in boundaries or numbers.

When plaintiff sues as the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subjectmatter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

Desendant's interest to be interested in the subject-matter, and Hability to be and that he is liable to be called upon to

answer the plaintiff's demand.

6. Where the suit is instituted after the expiration of the period prescribed by the law of limitation law.

Ground of exemption tion the plaint shall show the ground upon the station law.

Which exemption from such law is claimed.

The plaintiff claims either simply or in the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

Relief founded upon separate and distinct grounds, they shall be stated as far as may be separately

and distinctly.

Procedure on admiss. any) which he has produced along with it; and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(4) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

10. (I) The plaint shall at any stage of the suit be return of plaint.

Return of plaint. which the suit should have been instituted.

(2) On returning a plaint the Judge shall endorse thereon Procedure on return. the date of its presentation and return, the plaint. the name of the party presenting it, and a brief statement of the reasons for returning it.

Rejection of plaint. 11. The plaint shall be rejected in the

(a) where it does not disclose a cause of action:

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so:

(d) where the suit appears from the statement in the

plaint to be barred by any law.

12. Where a plaint is rejected the Judge shall record an Procedure on reject. order to that effect with the reasons for such order.

Where rejection of hereinbefore mentioned shall not of its own force preclude the plaintiff from prepresentation of fresh plaint.

The rejection of hereinbefore mentioned shall not of its own force preclude the plaintiff from presentation of fresh senting a fresh plaint in respect of the same cause of action.

Documents relied on in plaint.

possession or power, he shall produce it in Production of document Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such

documents in a list to be added or annexed to the plaint.

Statement in case of in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power.

Mhere the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

17. (I) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession

or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document original entry to be for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

18. (I) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accord-

ingly, shall not, without the leave of the Court, be received

in evidence on his behalf at the hearing of the suit.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

ORDER VIII.

WRITTEN STATEMENT AND SET-OFF.

1. The defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

2. The defendant must raise by his pleading all matters

which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if

it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegeation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading Specific denial of the defendant, shall be taken to be ad-

mitted except as against a person under disability: Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(1) Where in a suit for the recovery of money the defendant claims to set-off against the paintiff's demand any ascertained sum of Particulars of set-off to be given in written statemoney legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be men!. set-off.

(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Effect of set-off. Court to pronounce a final judgment in respect both of the original claim and of the set-off: But this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

Illustrations.

(a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the

(c) A sues B on a bill of exchange. B alleges that A has wrongfully other as representative to A. neglected to insure B's goods and is liable to him in compensation which he claims

to set off. The amount not being ascertained cannot be set off,

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set off.

(e) A sues B for compensation on account of trespass. B helds a promissory note for Rs. 1,000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovere, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A

alone.

(g) A sues B and C for Rs. 1,000. B cannot set off a debt due to him

alone by A.

(h) A owes the partnership firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000.

7. Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be Defence or set-off founded on separate grounds. stated, as far as may be, separately and distinctly.

Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off New ground of defence. may be raised by the defendant or plaintiff,

as the case may be, in his written statement.

No pleading subsequent to the written statement of a defendant other than by way of defence Subsequent pleadings. to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

10. Where any party from whom a written statement

is so required fails to present the same within Procedure when party the time fixed by the Court, the Court may fails to present written statement called for by pronounce judgment against him, or make such order in relation to the suit as it thinks

fit.

Court.

ORDER IX.

APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

On the day fixed in the summons for the defendant to appear and answer, the parties shall be Parties to appear on in attendance at the Court-house in perday fixed in summons for son or by their respective pleaders, and the defendant to appear and ans Wer. suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

2. Where on the day so fixed it is found that the summons has not been served upon the defend-Dismissal of suit where ant in consequence of the failure of the summons not served in plaintiff to pay the court-fee or postal consequence of plaintiff's failure to pay costs.

charges (if any) chargeable for such service, Court may make an order that the suit be dismissed:

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

3. Where neither party appears when the suit is called where neither party on for hearing the Court may make an appears, suit to be dis- order that the suit be dismissed.

missed.

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limit-Plaintiff may bring tion) bring a fresh suit; or he may apply fresh suit or Court may for an order to set the dismissal aside, restore suit to file. and if he satisfies the Court that there was

sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal

and shall appoint a day for proceeding with the suit.

¹[5. (1) Where, after a summons has been issued to the defendant, or to one of several defendants, Dismissal of suits where and returned unserved, the plaintiff fails, plaintiff, after summons returned unserved, fails for a period of three months from the date for three months to apof return made to the Court by the ply fresh summons. officer ordinarily certifying to the court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that-

(a) he has failed after using his best endeavours to discover the residence of the defendant who has not been served,

or

dated 18th Har 1988.

(b) such defendant is avoiding service of process, or

(c) there is any other sufficient cause for extending the

time, in which the Court may extend the time for making such

application for such period as it thinks fit.] (2) In such case the plaintiff may (subject to the law of

limitation) bring a fresh suit. Rule 5 (i) substituted vide Act IV of 1988 published in the Government Gazette Procedure when only does not appear when the suit is called on for hearing, then—

(a) if it is proved that the summons was duly served,

When summons duly the Court may proceed er parte;

(b) if it is not proved that the summons was duly served.

When summons not ed, the Court shall direct a second summons to be issued and served on the defendant;

(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs

occasioned by the postponement.

Procedure where de. suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Recording where defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Decree against plain. rule 8, the plaintiff shall be precluded from tiff by default bare fresh bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an orders setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

10. Where there are more plaintiffs than one, and

Procedure in case of non-attendance of one of several plaintiffs.

one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared,

or make such order as it thinks fit.

11. Where there are more defendants than one, and

Procedure in case of non-attendance of one or more of several defendents.

one or more of them appear and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Consequance of nonwithout attendance, sufficient cause shown, of party ordered to appear in person.

Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

Setting aside Decrees ex parte.

13. In any case in which a decree is passed ex parte against a defendant, he may apply to the Setting aside decree Court by which the decree was passed for es parte against defend. an order to set it aside; and if he satisfies ant. the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

No decree shall be set aside on any such application as aforesaid unless notice thereof has been No decree to be set served on the opposite party. aside without notice to opposite party.

ORDER X.

EXAMINATION OF PARTIES BY THE COURT.

tain from each party or his pleader whether allogations in pleadings are admitted or denied.

Ascertainment whether there allogations in pleadings are admitted or denied.

Ascertainment whether there admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

At the first hearing of the suit, or at any subsequent hearing, any party appearing in perparty or companion of able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

3. The substance of the examination shall be reduced Substance of examina. to writing by the Judge, and shall form part

tion to be written. of the record.

Consequence of refusal ing a pleader as is referred to in rule 2 refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the

suit as it thinks fit.

ORDER XI.

DISCOVERY AND INSPECTION.

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties,

ries.

and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. Particular interroga-In deciding upon such application, the tories to be submitted. Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary, either for disposing fairly of the suit or for saving costs.

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, Costs of interrogatories. and if it is the opinion of the taxing officer or of the Court, either with or without an application for inbeen exhibited unquiry, that such interrogatories have reasonably, vexatiously, or at improper length, the costs oc-

casioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

4. Interrogatories shall be in Form No. Appendix C, with such variations as cir-Form of interrogato- cumstances may require.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whe-Corporations. ther in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose Objectio to interroof the suit, or that the matters inquired gatories by answer. into are not sufficiently material at that stage, or on any other

ground, may be taken in the affidavit in answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonabling out interrogation ably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

8. Interrogatories shall be answered by affidavit to be affidavit in answer, filed within ten days, or within such other

filing. time as the Court may allow.

9. An affidavit in answer to interrogatroies shall be in Form of affidavit in Form No. 3 in Appendix C, with such variations as circumstances may require.

10. No exceptions shall be taken to any affidavit in No exception to be answer, but the sufficiency or otherwise of any such affidavit objected to as insuffi-

cient shall be determined by the Court.

answers insufficiently, the party interroor gating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer further, either by affidavit or by viva voce examination, as the Court may direct.

to the Court for an order directing any application for discovery of documents on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with

such variations as circumstances may require.

Production of documents the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating

to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when

produced, in such manner as shall appear just.

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose Inspection of docu-ments referred to in pleadings or affidavits reference is made pleadings or affidavits. to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

Notice to any party to produce any documents referred to in his pleading or affidavits shall Notice to produce. be in Form No. 7 in Appendix C, with

such variations as circumstances may require.

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a Time for inspection when notice given. notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody,

and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

18. (I) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, Odrer for inspection. or offers inspection elsewhere than at the

office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

verified copies.

Plied for, the Court may, if it thinks fit, instead of ordering inspection of the original books order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding

as to the validity of the claim of privilege.

- (3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.
- or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be

determined first, and reserve the question as to the discovery

or inspection.

Non-compliance order for discovery.

Non-compliance order for discovery.

With inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to intercogatories at trial.

Of an answer of the opposite party to intercogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

Order to apply to fendants, and to the next friends and guardians for the suit of persons under

disability.

ORDER XII.

ADMISSIONS.

1. Any party to a suit may give notice, by his pleading,

Notice of admission of or otherwise in writing, that he admits the truth of the whole or any part of the case

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

3. A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as

Form of notice. circumstances may require.

4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other Notice to admit facts. party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

5. A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with

such variations as circumstances may require.

Judgment on admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment as the Court may think just.

7. An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of facts, shall be sufficient evidence of such admissions, if evi-

dence thereof is required.

coops to blood wif the

Notice to produce documents shall be in Form No.

12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

9. If a notice to admit or produce specifies documents which are not necessary, the cost occasioned thereby shall be borne by the party giving such notice.

ORDER XIII.

PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

first hearing of the suit, all the document
bearing.

1. (I) The parties or their pleaders shall produce, at the first hearing of the suit, all the document
ary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof

prepared in such form as the High Court directs.

of any party which should have been but has not been produced in accordance with the requirements of rule I shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

3. The Court may at any stage of the suit reject any Rejection of irrelevant document which it considers irrelevant or or in admissible docu- otherwise inadmissible, recording the ments.

grounds of such rejection.

4. (I) Subject to the provisions of the next following sub-rule, there shall be endorsed on every documents admitted in evidence, admitted in evidence in the suit the following particulars, namely:—

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

5. (1) Save in so far as is otherwise provided by the

Bankers' Books Evidence Act, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account

Endorsements on copies of admitted entries in books, accounts and record.

is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished-

(a) where the record, book or account is produced on

behalf of a party, then by that party, or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion,

then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

6. Where a document relied on as evidence by either

party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, subrule (I), together with a statement of its having been rejected, and the endorsement shall be singed or

initialled by the Judge.

Endorsements on docu-

ments rejected as inadmissible in evidence.

7. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under Recording of admitted and return of rejected rule 5, shall form part of the record of the documents. suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons res-

pectively producing them.

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, Court may order any the Court may, if it sees sufficient cause, document to be impounddirect any document or book produced ed. before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document Return of admitted produced by him in the suit and placed on documents. the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

(a) where the sut s one in which an appeal is not

allowed, when the suit as been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the

original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence,

a receipt shall be given by the person receiving it.

10. (1) The Court may of its own motion, and may in its discretion upon the application of any

Court may send for of the parties to a suit, send for, either from its own records or from other Courts.

Court may send for of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or pro-

ceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Provisions as to docuprovisions as to documents applied to naterial objects.

The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

ORDER XIV.

SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON.

1. (I) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to

sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds: (a) issues of fact, (b) issues of

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the

suit makes no defence.

Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Materials from which from all or any of the following materials:—

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to

interrogatories delivered in the suit;

4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Powers to amend, and cree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a

decree, strike out any issues that appear to it to be wrongly framed or introduced.

Questions of fact or law them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the

Court in the affirmative or the negative of such issue,-

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to

the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Court, if satisfied that agreement was executed making such inquiry as it deems proper,—
nounce judgment.

7. Where the Court is satisfied, after making such inquiry as it deems proper,—

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the deci-

sion of such question as aforesaid, and

(c) that the same is fit to be tried and decided, it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

ORDER XV.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once

2. Where there are more defendants than one, and any one of the defendants is not at issue with

One of several defendthe plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall

proceed only against the other defendants.

3. (1) Where the parties are at issue on some question of law or of fact, and issues have been Parties at issue. framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are

present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

4. Where the summons has been issued for the final disposal of the suit and either party fails Failure to produce eviwithout sufficient cause to produce the dence. evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

ORDER XVI.

SUMMONING AND ATTENDANCE OF WITNESSES.

- 1. At any time after the suit is instituted, the parties may obtain, on application to the Court or Summons to attend to to such officer as it appoints in this behalf, give evidence or produce summonses to persons whose attendance is documents. required either to give evidence or to produce documents.
- 2. (1) The party applying for a summons shall, before the summons is granted and within a period Expenses of witness to be paid into Court on to be fixed, pay into Court such a sum of applying for summons. money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance,

(2) In determining the amount payable under this rule, the Court may, in the case of any person Experts. summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) [Where the Court is subordinate to the High Court] regard shall be had, in fixing the scale of Scale of expenses. such expenses, to any rules made in that

behalf.

The sum so paid into Court shall be tendered to the the person summoned, at the time of serv-Tender of expenses to ing the summons, if it can be served perwitness.

sonally.

(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum Procedure where inpaid into Court is not sufficient to sufficient sum paid in. cover such expenses or reasonable muneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court Expenses of witnesses may, from time to time, order the party detained more than one at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses

of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

5. Every summons for the attendnace of a person to give evidence or to produce a document shall specify the time and place at which Time, place and pur he is required to attend, and also whether pose of attendance to be specified in summon; his attendance is required for the purpose

of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the sum-

Inserted vide Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985,

mons with reasonable accuracy.

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely Sammons to produce to produce a document shall be deemed to document. have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Any person present in Court may be required by the 7. Court to give evidence or to produce any document then and there Power to require pe .. in his possons present in Court to

session or power. give evidence or produce document.

Every summons under this order shall be served as nearly as may be in the same manner as a Summone how serve !. a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

Service shall in all cases be made a sufficient time before the time specified in the summons Time for serving sumfor the attendance of the person summons moned, to allow him a reasonable time for preparation and for travelling to the place at which his

attendnace is required.

10. (I) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend Procedure where witnees fail to comply with or to produce the document in compliance summons. with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of

his property to such amount as it thinks fit, not exceeding the amount of the costs of attachement and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an

order for the attachment of immoveable property.

11. Where, at any time after the attachment of his property, such person appears and satisfies If witness appears, atthe Court,-

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the

attachment as it thinks fit.

12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, procedure if witness impose upon him such fine not exceeding fails to appear. five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall

order the property to be released from attachment.

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be Mode of attachment deemed to apply to any attachment and sale under this order as if the person whose property is so at-

tached were a judgment-debtor.

14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine Court may of its own accord summon as witany person other than a party to the suit nesses strangers to suit. and not called as a witness by a party to

the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

16. Subject as last aforeasaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the Duty of persons summoned to give evidence summons for that purpose, and whoever is or produce document. summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

16. (I) A person so summoned and attending shall, un-When they may less the Court otherwise directs, attend at each hearing until the suit has been depart.

disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any Application of rules 10 person who having attended in compliance to 13. with a summons departs, without lawful

excuse, in contravention of rule 16.

18. Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any Procedure where witness apprehended canof them, give the evidence or produce the not give evidence or document which he has been summoned to produce document. give or produce, the Court may require him

to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

19. No one shall be ordered to attend No witness to be orderin person to give evidence unless he reed to ettend in person unless resident within sidescertain limits.

(a) within the local limits of the Court's ordinary origi-

nal jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

Where any party to a suit present in Court refuses, 20. without lawful excuse, when required by Consequence of refusthe Court, to give evidence or to produce al of party to give eviany document then and there in his possesdence when called on by Court. sion or power, the Court may pronounce

judgment against him or make such order in relation to the

suit as it thinks fit.

Where any party to a suit is required to give evidence 21. or to produce a document, the provisions Rules as to witnesses as to witnesses shall apply to him so far to apply to parties sumas they are applicable. moned.

ORDER XVII.

ADJOURNMENTS.

1. (1) The Court may, if sufficient cause is shown at any stage of the suit grant time to the parties or to any of them, and may from time to Court may grant time and adjourn hearing. time adjourn the hearing of the suit.

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make Costs of adjournment. such order as it thinks fit with respect to

the costs occasioned by the adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to Procedure if parties dispose of the suit in one of the fail to appear on day directed in that behalf by Order IX or fixed.

make such other order as it thinks fit.

3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or Court may proceed to perform any other act necessary to the notwithstanding either further progress of the suit, for which time party fails to produce has been allowed, the Court may, notevidence, etc. withstanding such default, proceed to decide the suit forth-

with.

ORDER XVIII.

HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of Right to begin. law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks in which case the defendant has the right to begin.

2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to be-Statement and progin shall state his case and produce his duction of evidence.

evidence in support of the issues which he is bound to prove. (2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the

whole case.

3. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may at his option, either Evidence where seveproduce his evidence on those issues or reral lesues. serve it by way of answer to the evidence produced by the other party and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence and the other party may then reply especially on the evidence so produced by the party beginning but the party beginning will then be entitled to reply generally on the whole case.

4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence Witnesses to be exaand under the personal direction and supermined in open Court.

intendence of the Judge.

In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing in the language of the Court by or How evidence shall be taken in appealable in the presence and under the personal cases direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge, shall,

if necessary, correct the same, and shall sign it. Where the evidence is taken down in a language differ-

ent from that in which it is given, and the When deposition to be witness does not understand the language interpreted, in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the langu-

age in which it is given.

7. Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

Memorandum when evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall

form part of the record.

9. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down.

10. The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question if there appears

to be any special reason for so doing.

by a party or his pleader, and the Court allowed by Court. allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

12. The Court may record such remarks as it thinks Remarks on demeanour material respecting the demeanour of any

of witnesses. witness while under examination.

Memorandum of evidence in unappealable of the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum

shall be written and signed by the Judge and shall form part of the record.

Judge unable to make randum as required by this Order, he shall cause the memorandum to record reasons of his recorded, and shall cause the memorandum to be made in writing from his dicta-

tion in open Court.

(2) Every memorandum so made shall form part of the

record.

(I) Where a Judge is prevented by death, transfer 15. or other cause from concluding the trial of a suit, his successor may deal with any Power to deal with evidence or memorndum taken down evidence taken before another Judge. made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit

transferred under section 24.

16. (I) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Power to examine wit Court why his evidence should be taken ness immediately. immediately the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given

to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

17. The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time Court may recall and examine witness. being in force) put such questions to him as the Court thinks fit.

The Court may at any stage of a suit inspect any Power of Court to property or thing concerning which any inspect. question may arise.

ORDER XIX.

AFFIDAVITS.

Any Court may at any time for sufficient reason order that any particular fact or facts may be Power to order any point to be proved by proved by affidavit, or that the affidavit affidavit. of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bora ide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

2. (I) Upon any application evidence may be given by affidavit, but the Court may, at the instance of deponent for ance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the

the Court otherwise directs.

3. (I) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated

admitted: provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

ORDER XX.

JUDGMENT AND DECREE.

1. The Court, after the case has been heard, shall pro-Judgment when pro- nounce judgment in open Court, either at nounced once or on some future day, of which due notice shall be given to the parties or their pleaders.

Power to pronounce a judgjudgment written by ment written but not pronounced by his

Judge 's predecessor. predecessor.

3. The Judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review.

4. (I) Judgments of a Court of Small Causes need not Judgments of Small contain more than the points for determi-

Cause Courts. nation and the decision thereon.

(2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

5. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

6. (I) The decree shall agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted

or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

7. The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

8. Where a Judge has vacated office, after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

property, the decree shall contain a desmmoveable property.

Decree for recovery of cription of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

10. Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

11. (I) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

- Order, after decree, for payment by instalments.

 which are to be recorded, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.
- 12. (I) Where a suit is for the recovery of possession of Decree for possession immoveable property and for rent or mesne and mesne profits. profits, the Court may pass a decree—

(a) for the possession of the property;

(b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;

(c) directing an inquiry as to rent or mesne profits from

the instituion of the suit until-

(i) the delivery of possession to the decree-holder,

 (ii) the relinquishment of possession by the judgmentdebtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of

the decree,

whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause(c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

and for its due administration under the decree in administration under the decree of the Court, the Court shall, betion-suit fore passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration-suit is pending with respect to the estates of persons adjudged or delcared insolvent; and all persons who in any such case would be entitled to be paid out of such pro-

perty, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

14. (I) Where the Court decrees a claim to right of prior purchase in respect of a particular sale of property and the purchase-money has not Decree in right of prior purchase suit. been paid into Court, the decree shall-

(a) specify a day on or before which the purchase-money

shall be so paid, and

(b) direct that on payment into Court of such purchasemoney, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to

right of prior purchase, the decree shall direct,-

(a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and,

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed

to comply with the said provisions.

15. Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may Decree in suit for disslution of partnership. pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

16. In a suit for an account of pecuniary transactions between a principal and an agent, and in Decree in suit for acany other suit not hereinbefore provided count between principal and agent. for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

17. The Court may either by the decree directing an

special directions as order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

Decree in suit for partition of property or separate possession of separate therein.

18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immoveable property or to moveable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass preliminary decree declaring the rights of the several parties interested in the property and giv-

ing such further directions as may be required.

19. (1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the de
Decree when set-off is cree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

20. Certified copies of the judgment and decree shall be furnished to the parties on application to the furnished to their expense.

ORDER XXI.

EXECUTION OF DECREES AND ORDERS.

Payment under Decree.

- 1. (I) All money payable under a decree shall be paid Mode of paying money as follows, namely:under decree.
- (a) into the Court whose duty it is to execute the decree; or

(b) out of Court to the decree-holder; or

(c) otherwise as the Court which made the decree directs.

(2) Where any payment is made under clause (a) of subrule (1), notice of such payment shall be given to the decreeholder.

(1) Where any money payable under a decree of any kind is paid out of Court, or the de-Payment out of Court to cree is otherwise adjusted in whole or in decree-holder. part to the satisfaction of the decree-holder,

the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court

shall record the same accordingly.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any

Court executing the decree.

Courts executing Decrees.

- 3. Where immoveable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any Lands situate in more than one jurisdication. one of such Courts may attach and sell the entire estate or tenure.
 - Omitted.

Where the Court to which a decree is to be sent for 5. execution is situate within the same dis-Mode of transfer. trict as the Court which passed such decree, such Court shall send the same directly to the former Court, But, where the Court to which the decree is to be sent for execution is sitaute in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure where Court desires that its own decree execution shall send—

shall be executed by another Court.

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

7. The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to

be recorded under the hand of the Judge, requires such proof.

Recution of decree or District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

9. Omitted.

Application for execution.

Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the

11. (1) Where a decree is for the payment of money
the Court may, on the oral application of

the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a

warrant if he is within the precincts of the Court.

(2) Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars,

namely:-

(a) the number of the suit;(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any) what payment or other adjustment of the matter in controversy has been made

between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of

such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is re-

quired whether—

- (i) by the delivery of any property specifically decreed;
- (ii) by the attachment and sale, or by the sale without attachment, of any property;

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may

require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

12. Where an application is made for the attachment of

Application for attachment of moveable property not in judgment-debtor's possession. any moveable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attach.

Application for attach.

any immoveable property belonging to a judgment-debtor, it shall contain at the particulars.

(a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a

specification of such boundaries or numbers; and

(b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

14. Where an application is made for the attachment of

Power to require certified extract from Collector's register in certain cases. any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of,

or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares

of the registered proprietors.

15. (1) Where a decree has been passed jointly in favour

Application for execution by joint decree-holder.

of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for

the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

16. Where a decree or, if a decree has been passed jointly

Application for execution by transferee of decree. in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may

apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by

by such decree-holder:

Provided that, where the decree, or such interest as afore-said, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to

one of them, it shall not be executed against the others.

17. (I) On receiving an application for the execution of

a decree as provided by rule II, sub-rule (2), the Court shall ascertain whether such of decree.

of the requirements of rules II to I4 as

may be applicable to the case have been complied with; and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when

it was first presented.

(3) Every amendment made under this rule shall be sign-

ed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

18. (I) Where applications are made to a Court for the execution of cross-decrees in separate suits Execution in case of for the payment of two sums of money oross.decrees. passed between the same parties and capable of execution at the same time by such Court, then-

(a) if the two sums are equal, satisfaction shall be en-

tered upon both decrees; and

- (b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and the satisfaction for the smaller sum shall be entered on the decree for the larger sum as swell as satisfaction on the decree for the smaller sum.
- (2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless-

(a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

Il ustrations.

⁽a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future

day. B cannot treat his decree as a cross-decree under this rule,

(b) A and B co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtain a decree for Rs. 1,000 against B. C cannot treat his decree as a crossdecree under this rule.

(c) A obtains decree against B for Rs. 1,000. C, who is a truster for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's

decree as a cross-decree under this rule.

(d) A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this rule.

Where application is made to a Court for the execution of a decree under which two parties Execution in case of are entitled to recover sums of money from cross-claims under same

decree. each other, then,—

(a) if the two sums are equal, satisfaction for both shall

be entered upon the decree; and,

- (b) if the two sums are unequal, execution may be taken out only by the party entitled to the large sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.
- The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of Cross-decrees a mortgage or charge. cross-claims in mortgage suits.
- The Court may, in its discretion, refuse execution at the same time against the person and Simultaneous execuproperty of the judgment-debtor. tion

22. (1) Where an application for exe-Notice to show cause

against execution in cercution is madetain cases.

(a) more than one year after the date of the decree, or (b) against the legal representative of a party to the

decree, or '[(c) in respect of a decree passed outside the State and execution whereof is sought within the State,] the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not

be executed against him:

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative

1 Clause (c) inserted vide Act VI of 1995 published in Government Gazette dated 17th

Har 1995.

of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered exe-

cution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

the last preceding rule does not appear or of notice.

Of notice.

Of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and

make such order as it thinks fit.

24. (I) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

- (2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.
- (3) In every such process a day shall be specified on or before which it shall be executed.
- Endorsement on proand the manner in which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reasons of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.
- (2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

Stay of Execution.

When Court may stay execution. The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the

judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the appli-

cation.

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may re-Power to require seourity from, or impose quire such security from, or impose such conditions upon, judgconditions upon, the judgment-debtor as ment-debtor. it thinks fit.

27. No order of restitution or discharge under rule 26 shall prevent the property or person of a a judgment-debtor from being retaken in Liability of judgment. execution of the decree sent for execution. debtor discharged.

28. Any order of the Court by which the decree was passed, or of such Court of appeal as afore-Order of Court which said, in relation to the execution of such passed decree or of appellate Court to be decree, shall be binding upon the Court to binding upon Court apwhich the decree was sent for execution. plied to.

29. Where a suit is pending in any Court against the holder of a decree of such Court, on the Stay of execution part of the person against whom the depending suit between cree was passed, the Court may, on such decree-holder and judgterms as to security or otherwise, as it ment-debtor.

thinks fit, stay execution of the decree until the pending suit has been decided.

Mode of execution.

30. Every decree for the payment of money, including. Decree for payment of a decree for the payment of money as the alternative to some other relief, may money. be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

31. (1) Where the decree is for any specific moveable or for any share in a specific moveable, Decree for specific move-

able property.

it may be executed by the seizure, if

practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by detention in the civil prison of the judgment-debtor,

or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for six months, it the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-holder on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made has been refused, the attachment shall

cease.

32. (I) Where the pary against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction.

The pary against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction.

The pary against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction.

The part against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction.

The part against whom a decree for the specific performance of a contract, or for postitution of conjugal rights, or for an injunction.

wilfully failed to obey it, the decree may be enforced '[in case of a decree for restitution of conjugal rights, by the attachment of the property or in the case of a decree for the specific performance of contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injuntion has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil p ison of the directors or other principal officers thereof or by both attachment and detention

tion.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall

Inserted wide Act VI of 1995 published in Government Gamette dated 17th Har 1995.

pay the balance (if any) to the judgment-debtor on his appli-

- (4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.
- (5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may in lieu of or in addition to all or any of the processes aforesaid direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Illustration.

A, a person of little substance, erects a building which renders unhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

Discretion of Court executing decrees for restitution of conjugal rights. where '[the decree is for restitution of conjugal rights. wife, '[Court] may order that; in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(2) The Court may, from time to time, vary or modify any order made under sub-rule (1) for the periodical payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just,

(3) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the

payment of money.

34. (I) Where a decree is for the execution of a decument or for the endorsement of a negotiable Decree for execution of and the judgment-debtor instrument document, or endorsement neglects or refuses to obey the decree, the of negotiable instrument. decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court

fixes in this behalf

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the

draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the follow-

ing form, namely:-

"C. D., Judge of the Court of (or as the case may be), for A. B., in a suit by E. F. against A. B.",

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the

the party ordered to execute or endorse the same.

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

35. (1) Where a decree is for the delivery of any im-

moveable property, possession thereof shall Decree for immoveable be delivered to the party to whom it has property. been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immoveable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

36. Where a decree is for the delivery of any immove-

Decree for delivery of immovable property when in occupancy of tenant.

able property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall

order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of

the decree in regard to the property.

37. (I) Notwithstanding anything in these rules, where

Discretionary power to permit judgment-debtor to show cause .. gainst detention in prison.

an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrest-ed in pursuance of the application, the Court [shall] instead of issuing a war-

rant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison;

Provided that such notice shall not be necessary, if the Court is satisfied by affidavit, or otherwise, that with the object or effect of delaying the execution of the decree, the judgmentdebtor is likely to abscond or leave the local limits or jurisdiction of the Court.]

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue

a warrant for the arrest of the judgment-debtor.

38. Every warrant for the arrest of a judgment-debtor

shall direct the officer entrusted with its execution to bring him before the Court with Warrant for arrest to all convenient speed, unless the amount direct judgment-debtor to be brought up. which he has been ordered so pay, together

with the interest thereon and the cost (if any) to which he is liable, be sooner paid.

"In rule 37 "shall" substituted for "may" and provise added vide Act VI of 1995 published in to Government Gazette dated 17th Har 1995.

39. (I) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57 or, where no such scales have been fixed, as it considers sufficient with

reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance

before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deem-

ed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

Proceedings on appearance of judgment-debtor in a bedience to notice or being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may in its discretion, order the judgment-debtor to be detained in the custody of an officer of the court or release him on his furnishing security to the satisfaction of

the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may subject to the provisions of section 51 and to the other provisions of this Code make an order for the detention of the judgment-debtor in the civil prisons and shall

1Rule 40 substituted wid: Act VI of 1995 published in Government Gasette dated 17th

in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree the Court may before making the order of detention leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding 15 days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

- (4) A judgment-debtor released under this rule may be re-arrested.
- (5) When the Court does not make an order of detention under sub-rule (3) it shall disallow the application and if the judgment-debtor is under arrest direct his release.]

Attachment of property.

- 41. Where a decree is for the payment of money the Rxamination of judgment decree-holder may apply to the Court for debtor as to his property. an order that—
 - (a) the judgment-debtor, or
 - (b) in the case of a corporation, any officer thereof,

(c) any other person,
be orally examined as to whether any or what debts are owing
to the judgment-debtor and whether the judgment-debtor
has any and what other property or means of satisfying the
the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer
or other person, and for the production of any books or documents.

42. Where a decree directs an inquiry as to rent or mesne

profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

be attached, as in the case of an ordinary decree for the payment of money.

Where the property to be attached is moveable pro-

perty, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall

be responsible for the due custody thereof:

Attachment in case of

Attachment of moveable

agricultural produce, in possession of judgment-

property

debtor.

other

decree for rent or mesne

Provided that, when the property seized is subject to

speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

44. Where the property to be attached is agricultural produce, the attachment shall be made by

Attachment of agricul- affixing a copy of the warrant of attach-

(a) where such produce is a growing crop, on the land

on which such crop has grown, or

(b) where such produce has been cut or gathered on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited, and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

45. (1) Where agricultural produce is attached, the Court

shall make such arrangements for the custody thereof as it may deem sufficient
and for the purpose of enabling the Court
to make such arrangements, every ap-

plication for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself, or by any person appointed by by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed

from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of

the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

46. (1) In the case of—

Attachment of debt, share and other propery not in possession of judgement-debtor.

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,-

(i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the the same or receiving any dividend thereon;

(iii) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the Tother moveable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party

entitled to receive the same.

47. Where the property to be attached consists of the share or interest of the judgment-debtor in Attachment of share in moveable property belonging to him and another as co-owners, the attachment shall moveables. be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

(I) Where the property to be attached is the salary or 48. allowances of a public officer or of a local ahthority, the Court, whether the judgment-Attachment of salary of allowances of public debtor or the disbursing officer is or is not officer or servant of local within the local limits of the Court's juris-

authority.

diction, may order that the amount shall, subject to the provisions of section 60 be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as the Government may, by notification in the Government Gazette, appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing

attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the Government or the local authority, as the case may be, while the judgment-debtor is within the State and while he is outside the State if he is in receipt of any salary or allowances payable out of His Highness' revenues or the funds of a local authority in the State; and the Government or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

49. (I) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the

firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the parntership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a

sale being directed, to purchase the same.

(4) Every application for an order under snb-rule (2)

shall be served on the judgment-debtor and on his partners or such of them as are within the State.

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within the State.

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners, and all orders made

on such applications shall be similarly served.

50. (1) Where a decree has been passed against a firm, of decree execution may be grantedagainst firm.

(a) against any property of the partnership;(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually serv-

ed as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of 'section 247 of the Contract Act.

(2) Where the decree-dolder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as

to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

51. Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be Attachment of negotimade by actual seizure, and the instrument able instruments. shall be brought into Court and held subject to further orders of the Court.

52. Where the property to be attached is in the custody

¹ See Partnership Act.

Attachment of property in custody of Court or public officer.

of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further

orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgmentdebtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

53. (1) Where the property to be attached is a decree, either for the payment of money or for Attachment of decrees sale in enforcement of a mortgage or charge,

the attachment shall be made,-

(a) if the decrees were passed by the same Court, then

by order of such Court, and,

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until-

(i) the Court which passed the decree sought to be

executed cancels the notice, or

(ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgmentdebtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in subrule (I) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court, a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid

as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

Ment shall be made by an order prohibiting the property in any way, and all persons from taking any benefit from such transfer or

charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

55. Where—

Removel of attachment after sitisfaction of de-

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

(b) satisfaction of the decree is otherwise made through

the Court or certified to the Court, or

(c) the decree is set aside or reversed,
the attachment shall be deemed to be withdrawn, and, in the
case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense and a
copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

Order for payment of coin or currency notes to during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid

over to the party entitled under the decree to receive the same.

of a decree but by reason of the decree
Determination of the holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

Investigation of claims and objections.

58. (1) Where any claim is preferred to, or any objection

Investigation of claims to and objections to attachment of, and objections to attachment of, attached property. is made to the attachment of, any property ty attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the

like power as regards the examination of the claimant or objector, and in all other respects, asif he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly

or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

59. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed

of, the property attached.

60. Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attachment.

Release of property or objection such property was not, when attachment debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor

or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

Olisallowance of claim at the time it was attached, in the possestion property attached.

Son, or was in the possession of some other person in trust

for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

62. Where the Court is satisfied that the property is sub-

Continuance of attachment subject to claim of incumbrancer.

ject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

63. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he Saving of suits to est blish right to attached claims to the property in dispute, but, property. subject to the result of such suit, if any,

the order shall be conclusive.

Sale generally.

64. Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem neces-Power to order propersary to satisfy the decree, shall be sold, ty attached to be sold and proceeds to be paid to and that the proceeds of such sale, or a person entitled. sufficient portion thereof, shall be paid to the party entitled under the decree to

receive the same.

otherwise prescribed, every sale in execu-Save as tion of a decree shall be conducted by an Sales by whom conofficer of the Court or by such other perducted and how made. son as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

66. (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of Proclamation of sales by public auction. the intended sale to be made in the langu-

age of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

(a) the property to be sold;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any incumbrance to which the property is liable; (d) the amount for the recovery of which the sale is

ordered; and (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

67. (1) Every proclamation shall be made and publish-Mode of making procla- ed, as nearly as may be, in the manner pres-

cribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the Government Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

68. Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder Time of sale. shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

69. (1) The Court may, in its discretion, adjourn any

sale hereunder to a specified day and hour, Adjournment or stopand the officer conducting any such sale page of sale. may in his discretion adjourn the sale,

recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

- (2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.
- (3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has

been paid into the Court which ordered the sale.

70. Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a de-Saving of certain sales.

cree has been transferred to the Collector. 71. Any deficiency of price which may happen on a re-

Definiting purchaser answerable for loss on ro-sale.

sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court or to the Collector or subordinate of the Collector,

as the case may be, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recover-'able from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

72. (I) No holder of a decree in execution of which property is sold shall, without the express Decree holder not to bid permission of the Court, bid for or purchase

for or buy property with out permission.

the property. (2) Where a

decree-holder Where amount of purch ases,

decree may be taken as

payment.

decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decreeholder.

73. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, ac-Restriction on bidding or purchase by officers. quire or attempt to acquire any interest

in the property sold.

Sale of moveable property.

74. (1) Where the property to be sold is agricultural produce, the sale shall be Sale of agricultural produce. held,—

(a) if such produce is a growing crop, on or near the

land on which such crop has grown, or,

(b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the

produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding

the sale, is not offered for it, and

(b) the owner of the produce or a person authorised to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day.

the sale shall be postponed accordingly and shall be then com-

pleted, whatever price may be offered for the produce.

75. (1) Where the property to be sold is a growing crop and the crop from its nature admits of be ? ing stored but has not yet been stored, the Special provisions re day of the sale shall be so fixed as to admit lating to growing crops.

of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

76. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court Negotiable instruments may, instead of directing the sale to be and shares in corporations. made by public auction, authorize the

sale of such instrument or share through a broker.

77. (1) Where moveable property is sold by public auction the price of each lot shall be paid at Sale by public auction. the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same,

and the sale shall become absolute.

(3) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deeemd to be the bidding of the co-

78. No irregularity in publishing or conducting the sale

Irregularity not to vitinte sale, but any

of moveable property shall vitiate the the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the

specific property and for compensation in default of such recovery.

79. (I) Where the property sold is moveable property of moveable of which actual seizure has been made, it Delivery of moveable shall be delivered to the purchaser. property, shares.

(2) Where the propery sold is moveable propery in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the

purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the the manager, secretary or other proper officer of the corporation from permitting any such transfer or making an such payment to any person except the purchaser.

80. (I) Where the execution of a document or the endorsement of the party in whose name a Transfer of negotiable instruments and shares. negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorse-

ment by the party.

(2) Such execution or endorsement may be in the follow-

ing form, namely:-A. B. by C. D., Judge of the Court of (or as the case may be),

in a suit by E.F. against A. B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all pruposes as if the same had been signed by the

party himself.

81. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the pur-Vesting order in ouse of other property. chaser or as he may direct; and such property shall vest accordingly.

Sale of immoveable property.

- 82. Sales of immoveable property in execution of de-at Courte may order crees may be ordered by any Court other What Courts may orde: than a Court of Small Causes. sales.
- 83. (1) Where an order for the sale of immoveable property has been made, if the judgmentostponement of sale to debtor can satisfy the Court that there is enable judgment-debtor to raise amount of decree reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property com-prised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorising him within a period to be mentioned therein, and notwithstanding anything, contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set off such money under the provisions of rule 72, into Court:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the

Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

84. (1) On every sale of immoveable property the person declared to be the purchaser shall pay Deposit by purchaser immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set off the puchase money under rule 72, the Court may dispense with the requirements of this rule.

85. The full amount of purchase-money payable shall be paid by the purchaser into Court be-Time for payment in fore the Court closes on the fifteenth day full of purchase-money. from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off

to which he may be entitled under rule 72.

86. In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the Procedure in default of expenses of the sale, be forfeited to the payment. Government, and the property shall be

re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

87. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclama-Notification on re-sale. tion in the manner and for the period hereinbefore prescribed for the sale.

88. Where the property sold is a share of undivided immoveable property and two or more per-Bid of co-sharer to have sons, of whom one is a co-sharer, respectively preference. bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

89. (1) Where immoveable property has been sold in execution of a decree, any person, either owning such property at the date of the Application to set aside sale or holding an interest therein by virtue sale on deposit. of a title acquired before such sale, may

apply to have the sale set aside on his depositing in Court, (a) for payment to the purchaser, a sum equal to five

per cent. of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an

application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale. 90. (1) Where any immoveable propery has been sold

Application to set aside sale on ground of irregularity or fraud.

in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to

the Court to set aside the sale on the ground of a material

irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

91. The purchaser at any such sale in execution of a

Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

92. (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall subject to the pro-

visions of rule 94 become absolute.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the

application has been given to all persons effected thereby.

(3) No suit to set side an order made under this rule shall be brought by any person against whom such order is

made.

93. Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

[Certificate to purchaser.] the Court shall prepare a certificate specifying the property sold, the name of the person who at the time of sale is declared to be the purchaser and the date on which the sale was confirmed and send it for registration to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate. On completion of its registration according to the provisions of the Registration Act the registering officer shall return the certificate to the Court from whom it was received. The Court

shall then issue the certificate to the purchaser.

95. Where the immoveable property sold is in the occupancy of the judgment-debtor or of some

person on his behalf or of some person Delivery of property in claiming under a title created by the judgoccupancy of judgementdebtor. ment-debtor subsequently to the attach-

ment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses

to vacate the same.

96. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the the same and a certificate in respect thereof Delivery of property in has been granted under rule 94, the Court occupancy of tenant shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Resistance to delivery of possession to decree-holder or purchaser.

(1) Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a Resistance or obstruction to possession of imdecree is resisted or obstructed by any permoveable property. son in obtaining possession of the property,

he may make an application to the Court complaining of such

resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by Resistance or obstrucsome other person at his instigation, it shall tion by judgment-debtor.

direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

99. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming Resistance or obstruction by bona fide claimin good faith to be in possession of the property on his own account or on account of some person other than the judgement-debtor, the Court shall make an order dismissing the application.

(I) Where any person other than the judgment-debtor is dispossessed of immoveable pro-

perty by the holder of a decree for the pos-Dispossession by decreesession of such property or, where such property has been sold in execution of a deholder or purchaser.

cree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

101. Where the Court is satisfied that the applicant was in possession of the property on his own Bona fide claimant to account or on account of some person be restored to possession. other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

102. Nothing in rules 99 and 101 shall apply to resist-

ance or obstruction in execution of a decree for the possession of immoveable pro-Rules not applicable to transferee lite pendente. perty by a person to whom the judgment-

debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule Orders conclusive sub-99 or rule 101 may institute a suit to estabject to regular suit. lish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be conclusive.

ORDER XXI (A).

OF INSOLVENT JUDGMENT-DEBTORS.

1. Any judgment-debtor arrested or imprisoned in execution of a decree for money or against Power to apply for whose property an order of attachment has declaration of insolvency. been made in execution of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing

that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgmentdebtor resides or is in custody.

The application, when made by the Contents of application.

judgment debtor, shall set forth-

(a) the fact of his arrest and imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody;

(b) the amount, kind, and particulars of his property, and the value of any such property not consisting of money;

(c) the place or places in which such property is to be found;

(d) his willingness to put it at the disposal of the Court;

(e) the amount and particulars of all pecuniary claims against him; and

(f) the names and residences of his creditors, so far as

they are known to, or can be ascertained by, him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

The application shall be signed and verified by the applicant in manner hereinbefore prescribed Subscription and veri-fication of application.

for signing and verifying pleadings.

4. The Court shall fix a day for hearing the application, and shall cause a copy therof, with a notice in writing of the time and place at which it Service of copy of will be heard, to be stuck up in Court, and application and notice.

served at the applicant's expense-

where the applicant is the judgment-debtor-on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder and on the other creditors (if any) mentioned in the application;

where the applicant is the decree-holder—on the judgment-

debtor or his pleader.

The Court may, if it thinks fit, publish, at the applicant's expense, the application in the Government Gazette and such public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section, if

satisfied that he is unable to make them.

5. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other per-Power to serve other son alleging himself to be a creditor of the creditors. applicant, and applying for leave to be heard on the application.

6. If at the time of making an order admitting the petition or at any subsequent time before ad-Powers of Court as to judication, the judgment debtor is in cusjudgement-debtor under tody under the foregoing provisions of arrest this Code, the court may order his release on such term as to

security as may be reasonable and necessary.

7. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing,

the Court shall examine the judgment-Procedure at hearing. debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgmentdebtor's discharge, and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared on insolvent.

Declaration **8.** If the Court is satisfied solvency and appointment of Receiver.

(a) that the statements in the application are substan-

tially true;

(b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred, or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or at any subsequent time;

(c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts, or given an unfair preference to any of his creditors by any payment or

disposition of his property;

(d) that he has not committed any other act of had faith

regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a Receiver of his property, or, if it does not appoint such Receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order re-

jecting the application.

Rule 6 substituted vide Act IV of 1988 published in Government Gazette dated 18th Har 1988.

Other persons (if any) alleging themselves to be creditors of the insovlent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall, by order, determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such persons and debts, and the declaration under rule 8 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

A copy of every such schedule shall be stuck up in the

court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent firm, or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

Applications by coneduled creditors.

Applications by coneduled creditors.

Applications by coneduled creditors.

for permission to produce evidence of the amount and particulars of his pecuniary claims against the insovlent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule, so far as regards the amount, nature, or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule, so far as regards the amount, nature, or particulars of the debt of an-

other creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections (if any), may comply with or reject the application.

Government Gazette, and [every order pointing Receiver.]

the insolvent's property (except the particulars specified in the first proviso to section 60), whether set forth in his application or not.

12. The Receiver so appointed shall give such security as

Receiver to give security and collect assets. the Court may direct, and shall possess him
self of all such property, except as aforesaid;

and on his certifying that the insolvent has placed him in possession thereof, or has done everything Discharge of insolvent. in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

13. The Receiver shall proceed under Duty of Receiver. the direction of the Court-

(a) to convert the property into money;

(b) to pay thereout debts, fines, and penalties (if any) due by the insolvent to the State;

(c) to pay the said decree-holder's costs;

(d) to discharge, according to their respective priorities, all debts secured by mortgage of the insolvent's property;

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective

debts, and without any preference:

and such Receiver may retain, as a remuneration for the performance of his duties, a commission, to Hi: right to remunerabe fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus (if any) to the insolvent or his legal representative.

Provided that, in any local area in which a declaration has been made under section 68 and is in Delivery of surplus.

force, no sale of immoveable property paying revenue to the State, or held or let for agricultural purposes, shall be made by the Receiver; but, after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the moneys already received, (b) the immoveable property of the insolvent remaining unsold, and (c) the incumbrances (if any) existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by Schedule III as he thinks fit, and subject to the provisions of the said Schedule, so far as it may be applicable, and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

114. (a) An insolvent discharged under rule 8 or 12 may apply to the Court for protection, and the R ffeet of discharge. Court may on such application make an order for the protection of the insolvent from OI

detention.

(b) A protection order may apply either to all the debts of the debtor or to any one of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as

the Court may think fit.

(c) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order applied, and any insolvent arrested or detained contrary to the terms of such an order shall be entitled to his release. Provided that no such order shall operate to prejudice the rights of any creditor in the event of such order being revoked or the adjudication annulled.

(d) Any creditor shall be entitled to appear and oppose

the grant of a protection order.

(e) But the property of discharged insolvent (subject to the provisions of rule 15) whether previously or subsequently acquired (except the particulars specified in the first proviso to section 60, and except the property vested in the Receiver) shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one third, or until the expiry of twelve years from the date of the order of discharge under rule 8 or 12.

15. If the aggregate amount of the scheduled debts is

Declartion that inso'vent is dischaged from such liability

two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court

shall declare the insolvent, discharged as aforesaid, absolved

from further liability in respect of such debts.

∨ 16. Whenever, at the hearing under rule 7, it is proved

Procedure in case of that the applicant hasdishonest applicant.

(a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(b) fraudulently concealed, transferred, or removed any

property; or

(c) committed any other act of bad faith regarding the

matter of the application; the Court shall, at the instance of any of his creditors,

sentence him, by order in writing, to imprisonment for a term which may extend to one year from the date of committal; or the Court may, if it thinks fit, send him to the Magistrate

to be dealt with according to law.

17. '[The Government] may, by notification in the Government Gazette, invest any Court other than ment Gazette, invest any Court other than a District Court with the powers conferred on District Courts by the preceding rules and the District Judge may transfer to any Court situate in his District, and so invested, any case instituted under rule I.

A Court so invested may entertain an application under rule I by any person who has been arrested or imprisoned, or against whose property an order of attachement has been made in execution of a decree for money passed by that Court.

ORDER XXII.

DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

- 1. The death of a plaintiff or defendant shall not cause No abatement by part the suit to abate if the right to sue survives.

 Survives.
- Procedure where one of several plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiffs or defendants dies and right tiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs or a ainst the surviving defendant or defendants.
- Precedure in case of right to sue does not survive to the survive death of one of several ing plaintiff or plaintiffs along, or a sole plaintiff.

 Precedure in case of right to sue does not survive to the survive death of one of several ing plaintiff or plaintiffs along, or a sole plaintiff.

 Precedure in case of right to sue does not survive to the survive death of one of several ing plaintiff or plaintiffs along, or a sole plaintiff.

 Precedure in case of right to sue does not survive to the survive death of one of several ing plaintiff or plaintiffs along, or a sole plaintiff.

 The right to sue survives, the Court on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.
 - (2) Where within the time limited by law no application is made under sub-rule (I) the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defandant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.
 - Procedure in case of several defendants or of sole defendants or of sole defendants or of sole defendant or sole surviving defendant dies and the right to sue suvives,

'Substituted for "His Highness" by Act X of 1997, published in Government Gazette

the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the de-

ceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

of double the same force and effect as if it had been pronounced before the same force and effect as if it had been pronounced before the death took place.

7. (I) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit not abated by suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

8. (I) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency

and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

9. (1) Where a suit abates or is dismissed under this Effect of abatement or Order, no fresh suit shall be brought on the

dismissal, same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Limitation Act shall

apply to applications under sub-rule (2).

proceedure in case of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the
Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

11. In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

12. Nothing in rules 3, 4 and 8 shall apply to proceedings

Application of Order to in execution of decree or order.

ORDER XXIII.

WITHDRAWAL AND ADJUSTMENT OF SUITS.

1. (I) At any time after the institution of a suit the Withdrawal of suit or plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied—

- (a) that a suit must fail by reason of some formal defect, or
- (b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of

a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the

subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to withdraw without

the consent of the others.

2. In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff Limitation law not shall be bound by the law of limitation in affected by first suit. the same manner as if the first suit had not been instituted.

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compro-Compromise of suit. mise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subjectmatter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

Nothing in this Order shall apply to any proceedings

Proceedings in execution of a decree or order.

affected.

ORDER XXIV.

PAYMENT INTO COURT.

The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he consi-Deposit by defendant of amount in satisfacders a satisfaction in full of the claim. tion of claim

2. Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Notice of deposit. the Court otherwise directs) be paid to the plaintiff on his application. 3. No interest shall be allowed to the plaintiff on any

sum deposited by the defendant from the date of the receipt of such notice, whether

the sum deposited is in full of the claim or falls short thereof. alter notice.

Interest on deposit not allowed to plaintiff 4. (I) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may procedure where plain prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so for as they were caused by excess in the plaintiff's claim.

Procedure where he accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presuntably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in ull satisfaction of his claim. The Court should also give B his costs of suit. A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 10, and is wining to pay him that some without suit. B claims Rs. 150 and sues A for that amount. On plaint being filed A pays Rs. 100 into Court and dispetes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

ORDER XXV.

SECURITY FOR COSTS.

Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiff.

When security for coets are more plaintiffs than one) that all the plaintiff.

Plaintiff.

The plaintiff are, residing out of the State, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within the State other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the

payment of all costs incurred and likely to be incurred by any defendant.

(2) Whoever leaves the State under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of the State within the meaning of subrule (1).

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable

property within the State.

2. (I) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

- (2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.
- (3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXVI.

COMMISSIONS.

Commissions to examine witnesses.

1. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be exa-

mined.

A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may Where witness resides within Court's jurisdicbe issued to any person whom the Court tion. thinks fit to execute it.

Court may in any suit issue a commission (I) Any for the examination of-Persons for whose ex-

amination commission may issue.

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) any civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to

itself or to any subordinate Court.

Where any Court to which application is made for the issue of a commission for the exami-Commission or Renation of a person residing at any place quest to examine witnot within the State is satisfied that the ness not within the State. evidence of such person is necessary, the Court may issue such commission or a letter of request.

Every Court receiving a commission for the examination of any person shall examine him or Court to examine witcause him to be examined pursuant thereness pursuant to com-

mission. to.

Where a commission has been duly executed, it shall be returned, together with the evidence Return of commission taken under it, to the Court from which it with depositions of witwas issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

Evidence taken under a commission shall not be read as evidence in the suit without the consent When depositions of the party against whom the same is may be read in evi-

dence. offered, unless-

(a) the person who gave the evidence is beyond the

jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorises the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Commissions for Local investigations.

gation to be requisite or proper for the purcommissions to make pose of elucidating any matter in dispute,
or of ascertaining the market-vlaue of any
property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a
commission to such person as it thinks fit directing him to
make such investigation and to report thereon to the Court:

Provided that, where His Highness has made rules as to the persons to whom such commission shall be issued, the

Court shall be bound by such rules.

Procedure of Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

(2) The report of the Commissioner and the evidence Report and depositaken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Commissioner may be and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or men-tioned in his report, or as to his report, or

as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such

further inquiry to be made as it shall think fit.

Commissions to examine accounts.

11. In any suit in which an examination or adjustment

Commission to examine or adjust accounts.

of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such exami-

nation or adjustment.

(I) The Court shall furnish the Commissioner with such part of the proceedings and such in-Court to give Comstructions as appear necessary, and the missioner necessary ininstructions shall distinctly specify whestructions. ther the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

(2) The proceedings and report (if any) of the Commis-

Proceedings and report to be evidence. Court may direct further inquiry.

sioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

Commissions to make partitions.

13. Where a preliminary decree for partition has been passed, the Court may, in any case not Commission to make provided for by section 54, issue a compartion of immoveable property. mission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into Procedure of Commisas many shares as may be directed by the cioner. order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid

for the purpose of equalizing the value of the shares.

- (2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.
- (3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

General provisions.

15. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of Expenses of commission to be paid into the commission to be, within a time to be Court. fixed, paid into Court by the party at whose

instance or for whose benefit the commission is issued.

16. Any Commissioner appointed under this Order may, unless otherwise directed by the order of Powers of Commissioners

appointment,-

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things

relevant to the subject of inquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

17. (I) The provisions of this Code relating to the sum-

moning, attendance and examination of witnesses, and to the remuneration of, Attendence and exami. and penalties to be imposed upon, witnesses, nation of witnesses beshall apply to persons required to give evidence or to produce documents under fore Commissioner.

this order whether the commission in execution of which they are so required her been issued by a Court situate within or by a Court situate beyond the limits of the State, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court.

(2) A Commissioner may apply to any Court within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

18. (i) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commis-Parties to appear sioner in person or by their agents or pleadbefore Commissioner. ers.

(2) Where all or any of the parties do not so appear, the

Commissioner may proceed in their absence.

ORDER XXVII.

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY.

His Highness' Government, Jammu and Kashmir], the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

2. Persons being ex-officio or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on

behalf of the Government.

3. In suits by or against the '[Judicial Minister, His Highness' Government Jammu and Kashmir], Plaints in suits by or instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the words '[The Judicial Minister, His Highness' Government, Jammu and Kashmir].

Agent for Government pleader in any Court, or such other person as '[the Government] may for any Court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the '[Judicial Minister, His Highness' Government, Jammu and Kashmir], issued by such Court.

The Court, in fixing the day for the '[Judicial Minister, His Highness' Government, Jammu and Kashmir], to answer to the plaint, shall allow reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the '[Judicial Minister, His Highness' Government, Jammu and Kashmir], or the Government, and may extend the time at its discretion.

published in Government Gazette dated 7th Bhadon 1986 and 10th Phagan 1991 respectively for the words "Secretary, Jammu and Kashmir State Council."

In rule 4 "the Government" substituted for "His Highness" side Act X of 1996 published in Government Gazette dated 15th Bhadon 1996,

Attendance of person person on the part of the '[Judicial Minister of the Government, Jammu and Kashmir], who may be able to answer any material questions relating to the suit,

direct the attendance of such a person.

7. (I) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government ment before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the Court shall extend the time

for so long as appears to it to be necessary.

of a suit against a public officer, the Government undertakes the defence of a suit against a public officer, the Government procedure in suits ernment pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such

application the Court shall cause a note of his authority to be

entered in the register of civil suits.

(2) Where no application under sub-rule (I) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution

of a decree.

ORDER XXVIII.

SUITS BY OR AGAINST MILITARY MEN.

Officers or soldiers who cannot obtain leave may authorise any person to sue or defend for them.

Covernment in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

Subtituted vide Notification 3-L/86 as amended by Council order 46 of 1935 published in Government Gazette dated 7th Bhadon 1986 and 10th Chet 1991 respectively for the words 'Scoretary Jammu and Kashmir State Council."

(2) The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit

in person.

Explanation.—In this Order the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, detachment or depot to which

the officer or soldier belongs.

Person so authorised prosecute or defend a suit in his stead may prosecute or defend it in person in the point pleader.

Person so authorised prosecute or defend it in person in the the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

3. Processes served upon any person authorised by an officer or a soldier under rule I or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

ORDER XXIX.

Suits by or against Corporations.

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation of pleading.

Subscription and verification of pleading.

The suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation of pleading.

The suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation of pleading.

The suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation of pleading.

2. Subject to any statutory provision regulating service service on corpora. of process, where the suit is against a cortion.

poration, the summons may be served—cipal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered

office then at the place where the corporation carries on business.

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of Power to require personany director, or other principal officer of al attendance of office o' corporation. of the corporation who may be able to answer material questions relating to the suit.

ORDER XXX.

SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN.

1. (1) Any two or more persons claiming or being liable as partners and carrying on business in the State may sue or be sued in the name Suing of partners in name of firm. of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or

certified by any one of such persons.

2. (1) Where a suit is instituted by partners in the name Disclosure of partners' of their firm, the plaintiffs or their pleader shall, on demand in writing by or on benames. half of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed

upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless con-

tinue in the name of the firm.

3. Where persons are sued as partners in the name of their firm, the summons shall be served either—

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within the State upon any person having, at the time of service, the control or management of the partnership business there, as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without the State:

Provided that, in the case of a partnership, which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within the State whom it is sought to make liable.

4. (I) Notwithstanding anything contained in section
45 of the Contract Act, where two or
Right of suit on death more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

Notice in what capason upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Appearance of part. their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business,

no appearance by him shall be necessary unless he is a partner of the firm sued.

Appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

9. This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

ORDER XXXI.

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

Representation of benetention is between the persons beneficially, interested in such property and a third person, the trustees, etc.

and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or

2. Where there are several trustees, executors or administrators, they shall all be made parties

Joinder of trustees, to a suit against one or more of them:

Joinder of trustees, executors and administ to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside the State, need not be made parties.

3. Unless the Court directs otherwise, the husband of a married trustee, administratrix or executive not to join.

Husband of married trix shall not as such be a party to a suit by or against her.

ORDER XXXII.

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND.

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2. (I) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken of the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may

make such order in the matter as it thinks fit:

3. (I) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on

behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the

minor and that he is a fit person to be so appointed.

- (4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.
- '[(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such

¹⁹th Har 1998.

throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceeding in the execution of a decree.

Who may act as next majority may act as next friend of a minor friend or be appointed or as his guardian for the suit:

guardian for the suit.

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit,

a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed

guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

5. (1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Receipt by next friend or guardian for the suit shall not, without the leave of the Court, receive any or guardian for the suit money or other moveable property on befor minor.

(a) by way of compromise before decree or order, or (b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has

not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

7. (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly

recorded in the proceedings, enter into any Agreement or compro-mise by next friend or agreement or compromise on behalf of a guardian for the suit. minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against

all parties other than the minor.

8. (1) Unless otherwise ordered by the Court, a next Retirement of next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse

to that of the minor.

9. (1) Where the interest of the next friend of a minor adverse to that of the Removal of next friend. where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit ceases to reside within the State, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as

it thinks fit.

10. (I) On the retirement, removal or death of the next friend of a minor, further proceedings shall Stay of preceedings be stayed until the appointment of on removal, etc. of next friend. friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

11. (1) Where the guardian for the suit desires to retire

or does not do his duty, or where other Retirement, removal or sufficient ground is made to appear, the death of guardian for the Court may permit such guardian to retire Buit. or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires dies or is removed by the Court during the pendency of the suit, the

Court shall appoint a new guardian in his place.

12. (I) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pend-Course to be followed ing shall, on attaining majority, elect wheby minor plaintiff or ther he will proceed with the suit or appliapplicant on attaining majority. cation.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case

be corrected so as to read henceforth thus:-

'A. B., late a minor, by C. D., his next friend, but now

having attained majority."

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made ex parte: but no order discharging a next freind and permitting a minor plaintiff to proceed in his own name shall be made

without notice to the next friend.

13. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; Where minor co-plainand the Court, if it finds that he is not a tiff attaining majority necessary party, shall dismiss him from the desires to repudiate suit.

suit on such terms as to costs or otherwise as it thinks fit. (2) Notice of the application shall be served on the next

friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit,

the Court may direct him to be made a defendant.

14. (I) A minor on attaining majority may, if a sole casonable or im. plaintiff, apply that a suit instituted in his Onreasonable or imname by his next friend be dismissed on the

ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

15. The provisions contained in rules I to I4, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and Application of rules to persons of unsound to persons who though not so adjudged are mind. found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable

of protecting their interests when suing or being sued.

16. Nothing in this Order shall apply to a Sovereign Prince or Ruling Chief suing or being sued Saving for Princes and in the name of his State, or being sued by direction of His Highness in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

ORDER XXXIII

SUITS BY PAUPERS.

1. Subject to the following provisions, any suit may be instituted by a pauper. Suits may be instituted in forms pauperis.

Explanation.—A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.

2. Every application for permission to sue pauper shall contain the particulars requir-Contents of application. ed in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he

is exempted from appearing in Court, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

4. (I) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the ap-

plicant.

(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

5. The Court shall reject an application for permission

Rejection of application. to sue as a pauper-

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where the applicant is not a pauper, or

(c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or

(d) where his allegations do not show a cause of action,

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

6. Where the Court sees no reason to reject the application on any of the grounds stated in rule

Motice of day for recelving evidence of applicant's pauperism.

5, it shall fix a day (of which at least ten
days' clear notice shall be given to the
opposite party and the Government pleader)
for receiving such evidence as the applicant may adduce in
proof of his pauperism and for hearing any evidence which may

be adduced in disproof thereof.

7. (I) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the the witnesses (if any) produced by either Procedure at hearing. party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject

to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow

the applicant to sue as a pauper.

8. Where the application is granted, it shall be numbered and registered, and shall be deemed Proseilega li erplicathe plaint in the suit, and the suit shall tion admitted. proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit. It shall, however, be within the competence of the Court, in case of the extreme poverty of the plaintiff to exempt him from payment of process fees.

9. The Court may, on the application of the defendant, or of the Government pleader, of which Dispaspering. seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered-

(a) if he is guilty of vexatious or improper conduct in

the course of the suit;

(b) if it appears that his means are such that he ought

not to continue to sue as a pauper; or

(c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

10. Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the Costs where pauper plaintiff if he had not been permitted to enoceeds. sue as a pauper; such amount shall be recoverable by the Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

11. Where the plaintiff fails in the suit or is dispaupered, where or where the suit is withdrawn or dismis-

Pauper fails. sed.—

(a) because the summons for the defendant to appear

and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or

(b) because the plaintiff does not appear when the suit

is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

12. The Government shall have the right at any time to apply to the Court to make an order Government may apply for the payment of court-fees under rule for payment of court-fees.

10 or rule 11.

13. All matters arising between the Government and any party to the suit under rule 10, rule Government to be or rule 12 shall be deemed to be deemed a party. questions arising between the parties to the suit within the meaning of section 47.

14. Where an order is made under rule 10, rule rule 12, the Court shall forthwith cause a Copy of decree to be copy of the decree to be forwarded to the sent to Collector.

Collector.

15. An order refusing to allow the applicant to sue as

Refusal to allow applicant to sue as pauper to bar subsequent applica. tion of like nature.

a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the Government and by the opposite

party in opposing his application for leave to sue as a pauper. 16. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism Costs.

shall be costs in the suit.

ORDER XXXIV.

SUITS RELATING TO MORTGAGES OF IMMOVEABLE PROPERTY.

1. Subject to the provisions of this Code, all persons having an interest either in the mortgagesecurity or in the right of redemption shall Parties to suits for foreelocure, sale and redempbe joined as parties to any suit relating to to the mortgage.

Explanation.—A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

Preliminary decree in the Court shall pass a preliminary decree:—

foreclosure suit.

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for:—

(i) principal and interest on the mortgage,(ii) the cost of suit, if any, awarded to him, and

(iii) other costs, charges, and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon, or

(b) declaring the amount so due at that date, and

(c) directing:—

(i) that, if the defendant pays into Court the amount so found or declared due on or before such date the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a) or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and as provided in rule 10, together expenses with subsequent interest, on such sums respectively as provided in rule II, the plaintiff shall deliver up to the defendant or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property and shall, if so required, retransfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest the plaintiff shall be entitled to apply for a final decree debarring the defendant from all rights to

redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from or subrogated to the rights of any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be, of Appendix D with such variations as the

circumstances of the case may require.

3. (1) Where, before a final decree debarring the defendant from all rights to redeem the mort-Final decree in fore gaged property has been passed the declosure suit. fendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall on application made by the defendant in this behalf pass a final decree:-

 (a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree and if necessary,
 (b) ordering him to retransfer at the cost of the defendant the mortgaged property as directed in the said decree and also if necessary,

(c) ordering him to put the defendant in possession of

the property.

(2) Where payment in accordance with sub-rule (1) has not been made the Court shall on application made by the plaintiff in this behalf pass a final decree declaring that the defendant and all persons claiming through or under him are debarred from all rights to redeem the mortgaged property and also if necessary ordering the defendant to put the plaintiff in possession of the property.

(3) On the passing of a final decree under sub-rule (2) all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have

been discharged.

4. (1) In a suit for sale if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect Preliminary decree in mentioned in clauses (a), (b) and (c) (i) of suit for sale. sub-rule (1) of rule 2 and further directing that in default of the defendant paying as therein mentioned the plaintiff shall be entitled to apply for a final decree directing that the

mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest and the balance if any be paid to the defendant or other persons entitled to receive the same.

(2) The Court may of its own motion or on good cause shown and upon terms to be fixed by the Court from time to time at any time before a final decree for sale is passed extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) In a suit for foreclosure in the case of an anomalous mortgage if the plaintiff succeeds the Court the suit or of any other person interested in the mortgage-security or the right of redemption, pass a like Power to decree sale decree (in lieu of a decree for foreclosure) on such terms as it thinks fit including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to se-

cure the performance of the terms.

(4) Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or pesons deriving title from or subrogated to the rights of any such mortgagees are joined as parties the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and libilities of the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. II, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

5. (1) Where on or before the day fixed or at any time before the confirmation of a sale made in Final decree in suit pursuance of a final decree passed for sale. sub-rule (3) of this rule the defendant makes payment into Court of all amounts due from him under sub-rule (I) of rule 4, the Court shall on application made by the defendant in this behalf pass a final decree or if such decree

has been passed, an order:-

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree and, if necessary,

(b) ordering him to transfer the mortgaged property as directed in the said decree and, also, if necessary,

(c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule the Court shall not pass an order under sub-rule (1) of this rule unless the defendant in addition to the amount mentioned in sub-rule (I) deposits in Court for payment to the purchaser a sum equal to 5 per cent. of the amount of the purchase money paid into Court by the purchaser.

Where such deposit has been made the purchaser shall be

entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum

equal-to 5 per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made the court shall on application made by the plaintiff in this behalf pass a final decree directing that the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale be dealt with in the manner provided in sub-rule (I) of rule 4.

6. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff the Court on application by him may, if the Recovery of balance due on mortgage in suit for sale. balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

7. (1) In a suit for redemption if the plaintiff succeeds the Court shall pass a preliminary de-Preliminary decree in redemption suit.

cree:-

(a) Ordering that an account be taken of what was due to the defendant at the date of such decree for:-

(i) principal and interest on the mortgage;

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incur-red by him up to that date, in respect of his mortgage-security together with interest thereon;

(b) declaring the amount so due at that date; and

(c) directing— (i) that if the plaintiff pays into Court, the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a) or from the date on which such amount is declared in Court under clause (b) as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule to together with subsequent interest on such sums respectively as provided in rule 11, the defendant, shall deliver up to the plaintiff, or to such person as the plaintiff appoints all documents in his possession or power relating to the mortgaged property and shall if so required re-transfer the property to the plaintiff at his cost free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or where the defendant claims by derived title, by those under whom he claims and shall also, if necessary, put the plaintiff in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the defendant shall be entitled to apply for a final decree—

(a) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold, or

(b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all rights to redeem

the property.

- (2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure or sale as the case may be, extend the time fixed for the payment of the amount found or declared due under sub-rule (I) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.
- Final decree in refinal decree in refinal decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order

(a) ordering the defendant to deliver up the documents

referred to in the preliminary decree, and, if necessary,

(b) ordering him to re-transfer at the cost of the plain-

tiff the mortgaged property as directed in the said decree; and also if necessary,

(c) ordering him to put the plaintiff in possession of the

property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff, in addition to the amount mentioned in sub-rule (1) deposits in Court for the payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into ourt by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum

equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall on application made by the defendant in this behalf—

(a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all rights to redeem the mortgaged property and, also if necessary, ordering the plaintiff to put the defendant in possession of the mort-

(b) in the case of any other mortgage not being a usu-fructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the

plaintiff or other persons entitled to receive the same.]

Recovery of balance the last preceding rule are found insufficient to pay the amount due to the defendant, the Court, on application by him may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance.]

9. Notwithstanding anything hereinbefore contained, if

Decree where nothing is found due or where mortgagee has been overpaid.

it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overthe Court shall pass a decree directing the defendant, if so required, to retransfer the

property and to pay to the plaintiff the amount which may be Rule 8-A of O. 34 added vide Act VII of 1996 published in Government Gasette dated 15th Bhadon 1996.

found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

1[10. In finally adjusting the amount to be paid to

Costs of mortgagee in case of a foreclosure, sale or redemption, the court shall, unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle

him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment.

111. In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment

of interest to the mortgagee as follows, namely:-

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage:—

(i) on the principal amount found or declared due on the mortgage, at the rate payable on the principal, or, where no such rate is fixed, at such rate

as the Court deems reasonable;

(ii) on the amount of the costs of the suit awarded to the mortgagee, at such rate as the Court deems reasonable from the date of the preliminary de-

cree, and

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal, or failing both such rates, at nine per cent. per annum, and

(b) subsequent interest up to the date of realisation or actual payment at such rate as the Court deems reasonable:—

(i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause; and

(ii) on the amount adjudged due to the mortgagee in respect of such further costs, charges and expenses as may be payable under rule 10.]

12. Where any property the sale of which is directed

Byles 10 and 11 of O. 34 substituted vide Act VII of 1996 published in Government

under this Order is subject to a prior mort-Sale of proprety subgage, the Court may, with the consent of i ct to prior morgtage. the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

13. (I) Such proceeds shall be brought Application of proceeds. into Court and applied as follows:-

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on

account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to

affect the powers conferred by section 57 of the Transfer of

Property Act.

(1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a Suit for sale necessary claim arising under the mortgage, he shall for bringing mortgaged not be entitled to bring the mortgaged property to sale. property to sale otherwise than by instituting a suit for sale in enforecement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

15. All the provisions contained in this Order as to the sale or redemption of mortgaged property shall, so far as may be, apply to property Charges. subject to a charge within the meaning of section 100 of the

Transfer of Property Act.

ORDER XXXV.

INTERPLEADER.

1. In every suit of interpleader the plaint shall, in addition to the other statements necessary for Plaint in interpleaderplaints, statesuit.

(a) that the plaintiff claims no interest in the subject-

matter in dispute other than for charges or costs;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and

any of the defendants.

2. Where the thing claimed is capable of being paid into Court or placed in the custody of the Payment of thing Court, the plaintiff may be required to so pay or place it before he can be entitled to to any order in the suit.

3. Where any of the defendants in an interpleader-suit

Procedure where defendant is suing plain tiff.

Court in which the suit against the plaintiff.

tiff is pending shall, on being informed by the Court in which the interpleader-suit

has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Procedure at first hear.

4. (I) At the first hearing the Court may—

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or

(b) if it thinks that justice or convenience so require,

retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable

the Court to adjudicate, it may direct-

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

Agents and tenants to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations.

⁽a) A deposits a box of jewels with B as his agent. Calleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from number to C. I afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader suit against A and C.

6. Where the suit is properly instituted the Court may Charge for plaintiff's provide for the costs of the original plaintiff by giving him a charge on the thing claim-

ed or in some other effectual way.

ORDER XXXVI.

SPECIAL CASE.

1. (I) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question of the Court, and providing that, upon the finding of the Court with respect to such question,—

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the

other of them; or

(b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

Where value of subject.

Where value of subject.

The delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

3. (1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to

Agreement to be filed the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the

amount or value of the subject-matter of the agreement.

(2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the

other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

4. Where the agreement has been filed, the parties to it

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court's jurisdiction. Court and shall be bound by the statements contained therein.

5. (I) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the the parties, or after taking such evidence as it thinks fit,—

(a) that the agreement was duly executed by them,

(b) that they have a bona fide interest in the question

stated therein, and

(c) that the same is fit to be decided, it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

ORDER XXXVII.

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

Application of order.

1. This order shall apply only to the High Court.

2. (1) All suits upon bills of exchange, hundies or promissory notes may, in case the plaintiff

desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix B or in such other form

as may be, from time to time, prescribed.

(2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree

²[(a) for the principal sum due on the instrument and for interest calculated in accordance with the provisions of section

1Or 37 inserted vide Notification 3-L/85 published in Government Gazette dated 8th Bhadon 19.5.

2Words within brackets in rule 2 (2) of O. 37 were substituted vide Act No. 14 of 1988 published in Government Gazette dated 13th Obet 1988.

79 or 80 as the case may be, of the Negotiable Instruments Act, 1977, upto the date of the institution of the suit, or for the sum mentioned in the summons, whichever is less, and for interest upto the date of decree at the same rate or at such other rate as the Court thinks fit; and

(b) for such subsequent interest, if any as the Court

may order under section 34 of this Code, and

(c) for such sum for costs as may be prescribed;

Provided that, if the plaintiff claims more than such fixed sum for costs, the costs shall be ascertained in the ordinary way.

A decree passed under this rule may be executed forthwith.]

3. (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose Defendant showing desuch facts as would make it incumbent on fence on merita to have the holder to prove consideration, or such leave to appear. other facts as the Court may deem suffici-

ent to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

4. After decree the Court may, under special circum. stances, set aside the decree, and if necessary stay or set aside execution, and may Power to set aside degive leave to the defendant to appear to cree. the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as

the Court thinks fit.

In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited Power to order bill etc., with an officer of the Court, and may furto be deposited with offither order that all proceedings shall be staycer of Court. ed until the plaintiff gives security for the costs thereof.

6. The holder of every dishonoured bill of exchange or

promissory note shall have the same remedies for the recovery of the exepenses Recovery of cost of incurred in noting the same for non-acnoting non-acceptance of ceptance or non-payment, or otherwise, dishonoured bill or not. by reason of such dishonour, as he has under this Order for the

recovery of the amount of such bill or note.

7. Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary Procedure in suits.

CORDER XXXVIII.

ARREST BEFORE JUDGMENT.

Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against

him,—

 (i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the

jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any

part thereof, or

(b) that the defendant is about to leave the State under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not

furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

2. (I) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish

security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the

suit.

3. (I) A surety for the appearance of a defendant, may

at any time apply to the Court in which he Procedure on applicabecame such surety to be discharged from tion by surety to be discharged. his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a

warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

Where the defendant fails to comply with any order under rule 2, or rule 3, the Court may com-Procedure where defendent tails to furnish

mit him to the civil prison until the decision of the suit, or, where a decree is passed against the defendant, until the decree

has been satisfied:

security or find tresh

Security.

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or vlaue of the subject-matter of the suit does not exceed fifty rupees:

Provided also that no person shall be detained in prison

under this rule after he has complied with such order.

Attachment before Judgment.

(I) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the de-Where defendant may fendant, with intent to obstruct or delay be onited upon to furnish security for production the execution of any decree that may be of property. passed against him,—

(a) is about to dispose of the whole or any part of his

property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated

value thereof. (3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so

specified.

THE CODE OF CIVIL PROCEDURE, 1977. o. 38, R. 6-12.]

(I) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time where Attachment fixed by the Court, the Court may order cause not snown or scourity not furnished. that the property specified, or such por-

tion thereof as appear sufficient to satisfy any decree which

may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

otherwise expressly provided, the attach-7. Save as ment shall be made in the manner provided Mode of making attachfor the attachment of property in execument.

tion of a decree.

8. Where any claim is preferred to property attached

Investigation of claim to property attached before judgment.

Ramoval of attachment when security furnished

rights of stranger nor bar

decree-holder from apply-

or suit dismissed.

ing for sale.

decree.

before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree

for the payment of money.

9. Where an order is made for attachment before judg-

ment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security together with security for the costs of the

attachment, or when the suit is dismissed.

10. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar Attichment before judgment not to affect

any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of

such decree.

Where property is under attachment by virtue of the provisions of this Order

decree is subsequently passed in favour of plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the

property.

12,

Agricultural produce not attachable before judgmont.

Propertyn ttached before

fudgment not to be reat tached in execution of

> Nothing in this Order shall be deemed to authorise the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court

to order the attachment or production of such produce.

[Nothing in this order shall be deemed to empower Small Cause Court not to any Court of Small Causes to make an order attach immovable property. for the attachment of immoveable property.]

ORDER XXXIX.

TEMPORATY INJUNCTIONS AND INTERLOCUTORY ORDERS.

Temporary Injunctions.

any suit it is proved by affidavit or Where in otherwise-Cases in which temporary injunction may be granted.

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit,

or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

2. (I) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation

Injunction to restrain is claimed in the suit or not, the plaintiff repetition or continuance may, at any time after the commencement of breach.

of the suit, and either before or after judg-

ment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not ecxeeding six months, unless in the meantime the Court directs his release.

1 Rule 13 added wide Act 9 of 1938 published in Government Guzette dated 18th Har

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

3. The Court shall in all cases, except where it appears that the object of granting the injunction

Before granting injunction Court to direct notice to opposite party. would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given

to the opposite party.

Order for injunction may be discharged, or varied, or set aside by the Court, on application may be discharged, varied or cation made thereto by any party disset aside.

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation

whose personal action it seeks to restrain.

Interlocutory Orders.

Power to order interim a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be dedesirable to have sold at once.

7. (I) The Court may, on the application of any party Detention, preservation, to a suit, and on such terms as it thinks

inspection, etc., of sub- fit,-

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the

possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, mutatis mutandis, to persons authorised to enter under this rule.

8. (1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institu-Application for such orders to be after notice. tion of the suit.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appear-

ance.

Where land paying revenue to Government, or a ten-

When party may be put in immediate posses. sion of land the subjectmatter of suit.

ure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be,

and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate

possession of the land or tenure:

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

10. Where the subject-matter of a suit is money or some other thing capable of delivery and any Deposit of money, etc., party thereto admits that he holds such in Court. money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

ORDER XL.

APPOINTMENT OF RECEIVERS.

1. (I) Where it appears to the Court to be just and con-Appointment of receiv- venient, the Court may by order-

(a) appoint a receiver of any property, whether before

or after decree; (b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or

management of the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to re-

move.

2. The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

3. Every receiver so appointed shall—

Duties.

(a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;

(b) submit his accounts at such periods and in such form

as the Court directs;

- (c) pay the amount due from him as the Court directs;
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Enforcement of re- 4. Where a receiver—

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay the amount due from him as the Court

directs, or

(c) occasions loss to the property by his wilful default

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

When Collector may be appointed receiver. Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be premoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

ORDER XLI.

APPEALS FROM ORIGINAL DECREES.

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or Form of appeal. What to accompany to such officer as it appoints in this behalf. memorandum. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to Contents of memorandum. the decree appealed from without any argument or narrative, and such grounds shall be numbered con-

secutively.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground

of objection not set forth in the memoran-Grounds which may be taken in appeal. dum of appeal; but the Appellate Court, in deciding the appeal, shall not be con-

fined to the grounds of objection set forth in the memcrandum

of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the Rejection or amend. appellant for the purpose of being amendment of memoradum. ed within a time to be fixed by the Court

or be amended then and there:

(2) Where the Court rejects any memorandum it shall

record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

4. Where there are more plaintiffs or more defendants

than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, One of gaveral plaintiffs or detendants may any one of the plaintiffs or of the defendants obtain reversal of whole may appeal from the whole decree, and decree where it proceed. on ground common to thereupon the Appellate Court may reverse all. or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of proceedings and of execution.

5. (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be staved by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be

stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party apply-

ing for stay of execution unless the order is made;

(b) that the application has been made without un-

reasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an er parte order for stay of execution

pending the hearing of the application.

Security in case of order decree from which an appeal is pending, for execution of decree from which passed the decree shall, on sufficient cause being shown by the appealed from.

pellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immoveable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court

thinks fit until the appeal is disposed of.

7. No such security as is mentioned in rules 5 and 6 shall be required from the '[Judicial Minister No security to be re-His Highness' Government, Jammu and quired from the Govern-Kashmir], or, where the Government has ment or a public officer in certain cases. undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

The powers conferred by rules 5 and 6 shall be exerciseable where an appeal may be or has been Exercise of powers in preferred not from the decree but from an appeal from order made in execution of decree. order made in execution of such decree.

Procedure on admission of appeal.

9. (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of Registry of memorandum of appeal. that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

(2) Such book shall be called the Re-Register of Appeals.

gister of Appeals.

10. (1) The Appellate Court may in its discretion, either before the respondent is called upon to ap-Appellate Court may pear and answer or afterwards on the aprequire anpellant to furplication of the respondent, demand from nish security for costs. the appeallant security for the costs of the appeal, or of the original suit, or of both:

Provided that the Court shall demand such security in all cases in which the appellant is residing Where appellant reout of the state and is not possessed of any sides out of the State. sufficient immoveable property within the State other than the property (if any) to which the appeal

relates. (2) Where such security is not furnished within such time

as the Court orders, the Court shall reject the appeal.

11. (1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader Power to dismiss appeal and hearing him accordingly if he appears without sending notice to on that day, may dismiss the appeal with-out sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

Substituted side Notification 3-L/86 as amended by Council Order 46 of 1935 publish. ed in Government Gazette dated 7th Bhaden 1986 and Government Gazette dated 10th Phagan

1991 respectively.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

12. (I) Unless the Appellate Court dismisses the appeal under rule II, it shall fix a day for hearing

Day for hearing appeal. the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

13. (I) Where the appeal is not dismissed under rule II,

Appellate Court shall send notice of the
appeal to the Court from whose decree the

decree appealed from appeal is preferred.

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court. Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made: and copies of such papers shall be made at the

expense of, and given to, the applicant.

Publication and service of notice of day for hear-ing appeal.

Publication and service of notice of day for hear-ing appeal.

Court to the Court from whose decree the appeal is preferred, and shall be served on the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Appellate Court may decree the appeal is preferred, the Appellate Court may late Court may itself cause notice to be late Court may itself cause the notice to be served.

served.

under the provisions above referred to.

15. The notice to the respondent shall declare that, if he does not appear in the Appellate Court Contents of notice. on the day so fixed, the appeal will be heard ex parte.

Procedure on [hearing.

16. (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appel-Right to begin. lant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in

such case the appellant shall be entitled to reply.

17. (I) Where on the day fixed, or on any other day to which the hearing may be adjourned, the Dism'ssal of appeal for appellant does not appear when the appeal appellant's default. is called on for hearing, the Court may make an order that the appeal be dismissed.

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard

Hearing appeal ex parte. parte.

18. Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not Dismissul of appeal where notice not served in been served in consequence of the failure consequence of appellant's of the appellant to deposit, within the failure to deposit costs. period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed:

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for

hearing.

19. Where an appeal is dismissed under rule 11, subrule (2), or rule 17 or rule 18, the appel-Re-admission of appeal lant may apply to the Appellate Court for the re-admission of the appeal; and, where dismissed for default. it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to cost or otherwise as it thinks fit. 20. Where it appears to the Court at the hearing that

any person who was a party to the suit in the Court from whose decree the appeal Power to adjourn hesis preferred, but who has not been made a ring and direct persons appearing interested to party to the appeal, is interested in the he made respondents. result of the appeal, the Court [may adjourn the hearing to a

future day to be fixed by the Court and direct that such person be made a respondent.

21. Where an appeal is heard ex parte and judgment is

Re-hearing on application of respondent against whom ex parte decree made.

pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that

he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to cost or otherwise as it thinks fit to impose upon him.

22. (1) Any respondent, though he may not have ap-

Upon he ring respondent may object to decree as if he had preferred separate appeal.

pealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of

appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

(2) Such cross-objection shall be in the from of a memorandum, and the provisions of rule I, so Form of objection and far as they relate to the form and contents provisions applicable thereto. of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice

to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall so far as they can be made applicable, apply to an objection under this rule.

123. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed Remand of case by apin appeal, the Appellate Court may, if it pellate Court. thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall subject to all just exceptions be evidence during the trial after remand.

24. Where the evidence upon the record is sufficient to

Where evidence on record sufficient Appellate Court may determine case finally. enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the Court from whose decree the appeal is

the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. Where the Court from whose decree the appeal is

Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.

preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the

same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the

additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.

26. (I) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections

to any finding.

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Senting such memorandum the Appellate Court shall proceed to dertermine the peal.

27. (I) The parties to an appeal shall not be entitled to production of additional produce additional evidence, whether oral or documentary, in the Appellate Court.

But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be

produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

28. Wherever additional evidence is allowed to be produced, the Appellate Court may either Mode of taking adtake such evidence, or direct the Court ditional evidence. from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29. Where additional evidence is directed or allowed to be taken, the Appellate Court shall speci-Points to be defined and recorded. fy the points to which the evidence is to be confined, and record on its proceedings the points so speci-

fied.

Judgement in appeal.

30. The appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or Judgment when and where prenounced. in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

31. The judgment of the Appellate Contents, date and signature of judgment. Court shall be in writing and shall state-

(a) the points for determination;

b) the decis on thereon;

(c) the reasons for the decision; and,

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

32. The judgment may be for confirming, varying or reversing the decree from which the ap-What judgment may peal is preferred, or, if the parties to the direct. appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an

33. The Appellate Court shall have power to pass any decree and make any order which ought Power of Court of to have been passed or made and to pass Appeal or make such further or other decree or order as the case may require, and this

power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

Provided that the Appellate Court shall not make any order under section 35-A in pursuance of any objection on which the Court from whose decree the appeal is preferred

has omitted or refused to make such order].

Illustration.

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. the Appeliate Court decides in favour of X. It has power to pass a decree against Y.

²[34. Where the appeal is heard by more Judges than one, any Judge dissenting from the judg-Dissent to be recorded. ment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reason for the same.]

Decree in appeal.

35. (I) The decree of the Appellate Court shall bear date the day on which the judgment was Da'e and contents of pronounced. decree.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudi-

cation made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge

*[or Judges who passed it; Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the

Court to sign the decree.]

Proviso added vide Act IV of 1988 published in Government Gazette dated 18th Har Rule 34 inserted vide Notification 3-L/85 published in Government Gazette dated 1988. *AID-rule 4 subtituted vide Motification 9-L/85 published in Government Garette 8th Bhadon 1985.

dated 8th Bhedon 1985.

36. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

37. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to

the Court which passed the decree appealed ed from and shall be filed with the original proceedings in the suit, and an entry of

the judgment of the Appellate Court shall be made in the re-

gister of civil suits.

ORDER XLII.

APPEALS FROM APPELLATE DECREES.

1. The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees. The appellant shall, in addition to the copies of the decree and judgment appealed from, also file a copy of the judgment of the Court of First Instance.

ORDER XLIII.

APPEALS FROM ORDERS.

1. An appeal shall lie from the following orders under Appeals from orders. the provisions of section 104, namely:—

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court;

(b) an order under rule 10 of Order VIII pronouncing

judgment against a party;

(c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set side a decree passed ex parte;

(e) an order under rule 4 of Order X pronouncing judg-

ment against a party;

(f) an order under rule 21 of Order XI;

(g) an order under rule 10 of Order XVI for the at-

(h) an order under rule 20 of Order XVI pronouncing judgment against a party;

(i) an order under rule 34 of Order XXI on an objec-

tion to the draft of a document or of an endorsement;

(ii) an order under sub-rule 2, rule II of Order XX passed without the consent of the parties;

(j) an order under rule 72 or rule 92 of Order XXI set-

ting aside or refusing to set aside a sale;

"[(jj) an order passed by any Court other than the High Court under Order XXI(A) in the exercise of insolvency jurisdiction.]

(k) an order under rule 9 of Order XXII refusing to set

aside the abatement or dismissal of a suit;

(l) an order under rule 10 of Order XXII giving or refusing to give leave;

 (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;

(n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(o) an order under ²[rule 2, rule 4 or rule 7] of Order XXXIV refusing to extend the time for the payment of mort-

gage-money;

(oo) an order under rule 5 of Order XXXIII, rejecting

an application for permission to sue as a pauper.

(p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;

(q) an order under rule 2, rule 3 or rule 6 of Order

XXXVIII;

(r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX;

(s) an order under rule I or rule 4 of Order XL;

(t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;

(u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

(v) an order under rule 4 of Order XLVII granting an

application for review.

2. The rules of Order XLI shall apply, so far as may be, to appeals from orders.

^{*}Added wide Notification No. 9-L/82 published in Government Gazette dated 9th Magher 1928.

*In clause (o) words within brackets substituted for the words "rule 3 or rule 8" wide Act VII of 1996 published in Government Gazette dated 15th Bhadon 1998.

ORDER XLIV.

PAUPER APPEALS.

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memrandum of appeal, may present an appli-Who may appeal as cation accompanied by a memorandum pauper. of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the persentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable.

Provided that the Court shall reject the appplication unless, upon a perusal thereof and of the

Precedure on appli-cation for admission of judgment and decree appealed from, it sees reason to think that the decree is contrary appeal. to law or to some usage having the force of law, or is otherwise erroneous or unjust.

2. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or Inquiry into pauperism. under the orders of the Appellate Court by the Court from whose decision the appeal is preferred:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

ORDER XLV.

APPEALS TO HIS HIGHNESS.

Repealed.

2 to 12. Omitted.

Repealed. ¹13. 114. Repealed.

15. (1) Whoever desires to obtain execution of any order of His Highness shall apply by petition, accompanied by a certified copy of the de-Procedure to enforce orders of His Highness. cree passed or order made 2[* * *]and sought to be executed, to '[the High Court].

Rules 1, 13, 14 and 16 repealed vide Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

In rule 15 (1) words "in appeal" in line 4 omitted and for the last words "the Court from which the appeal to His Highness was preferred" the words "the High Court" subssituted vide Motification 8-L/85 published in Government Gazette 8th Bhadon 1985.

(2) Such Court shall transmit the order of His Highness to the Court which passed the first decree appealed from, or to such other Court as His Highness by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

16. Repealed.

ORDER XLVI.

REFERENCE.

1. Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such Reference of question decree, any question of law or usage havto High Court. ing the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

2. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an Court may pass decree contingent upon decision order contingent upon the decision of the

of High Court. High Court on the point referred;

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit Jadgment of High Court to be transmitted, a copy of its judgment, under the signaand case disposed of acture of the Registrar, to the Court by which cordingly. the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

The costs (if any) consequent on a reference for the decision of the High Court shall be costs in Costs of reference to

the case. High Court.

Power to alter, etc., decree of Court making amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

Power to refer to High which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

7. (1) Where it appears to a District Court that a Court

Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes. subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit High Court with a statement of its reasons

the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court

may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

ORDER XLVII.

REVIEW.

Application for review 1. (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed,

but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed,

(c) by a decision on a reference from a Court of Small

Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

2. An application for review of a decree or order of a

To whom applications for review may be made.

Court, not being the High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule I or the existence of

a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a), be disposed of by his successor.

3. The provisions as to the form of preferring appeals Form of applications shall apply, mutatis mutandis, to appli-

for review. cations for review.

4. (I) Where it appears to the Court that there is not sufficient ground for a review, it shall rerejected. where ject the application.

(2) Where the Court is of opinion that the application Application where for review should be granted, it shall grant

smated. the same:

Provided that-

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for: and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without

strict proof of such allegation.

Application for review in Court consisting of two or more Judges.

[5. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, connues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which

the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the

Court shall hear the same.

6. (1) Where the application for a review is heard by more than one Judge and the Court is Application where reequally divided, the application shall be jeoted. rejected.

(2) Where there is a majority, the decision shall be accord-

ing to the opinion of the majority].

7. (1) An order of the Court rejecting the application shall not be appealable; but an order grant-Order of rejection not ing an application may be objected to on appealable. Objections the ground that the application wasto order granting application.

(a) in contravention of the provisions of rule 2,

(b) in contravention of the provisions of rule 4, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the

final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court

Rales 5 and 6 added vide Notification No. 3-L/35 published in Government Gasette dated 8th Bhalon 1985.

that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

- Registry of application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.
- 9. No application to review an order made on an appli-Bar of certain applica. cation for a review or a decree or order passed or made on a review shall be entertained.

ORDER XLVIII.

MISCELLANEOUS.

- 1. (I) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.
 - (2) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.
- 2. All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.
- 3. The forms given in the appendices, with such variation as the circumstances of each case may require shall be used for the purposes therein mentioned.

ORDER XLIX.

THE HIGH COURT.

1. Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its testa-

Order XLIX insorted wide Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

mentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents, may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

2. Nothing in this Schedule shall be deemed to limit or otherwise affect any rules in force at the Rules already in force commencement of this Code for the taking not affected. of evidence or the recording of judgments

and orders by the High Court.

3. The following rules shall not apply to the High Court in the exercise of its ordinary or extraordi-Application of rules. nary original civil jurisdiction, namely:-

(1) rule 10 and rule 11, clauses (b) and (c), of Order VII:

(2) rule 3 of Order X;(3) rule 2 of Order XVI;

(4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;

(5) rules I to 8 of Order XX; and

(6) rule 7 of Order XXXIII (so far as relates to the

making of a memorandum);

and rule 35 order XLI shall not apply to the High Court in the exercise of its appellate jurisdiction].

ORDER L.

SMALL CAUSE COURTS.

The provision hereinafter specified shall not extend to Courts constituted under the Small Causes Small Cause Courts. Courts Act, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say-

(a) so much of this Schedule as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;

(ii) the execution of decrees against immoveable property or the interest of a partner in partnership property;

(iii) the settlement of issues; and

(b) the following rules and orders,-Order II, rule i (frame of suit); Order X, rule 3 (record of examination of parties); Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment; Order XVIII, rules 5 to 12 (evidence); Orders XLI to XLV (appeals); Order XLVII, rules 2, 3, 5, 6, 7 (reveiw).

ORDER LI.
Omitted.

APPENDIX A.

PLEADINGS.

(I) TITLES OF SUITS.

IN THE COURT OF

A. B. (add description and residence) .. Plaintiff,

C. D. (add description and residence)

.. Defendant.

(2) DESCRIPTION OF PARTIES IN PARTICULAR CASES.

¹Judicial Minister His Highness' Government, Jammu and Kashmir.

The State Advocate

The Collector of

The State of

in Government Gasette dated 7th Bhadon 1986 and Government Gasette dated 10th Phagan 1991 respectively.

The A. B. Company, Limited, having its registered office at

A. B., a public officer of the C. D. Company

A. B. (add description and residence), on behalf of himself and all other creditors of C. D., late of (add description and residence).

A. B., a minor (add description and residence), by C. D. (or by the Court of Wards), his next friend.

A. B. (add description and residence), a person of unsound mind (or of week mind), by C. D., his next friend.

A. B., a firm carrying on business in partnership at

A. B. (add description and residence), by his constituted attorney C. D. (add description and residence).

A. B. (add description and residence), executor of C. D., deceased.

A. B. (add description and residence), heir of C. D., deceased.

the vest our of recent to

(3) PLAINTS.

No. I.

MONEY LENT.

(TITLE.)

- A. B., the above-named plaintiff, states as follows:—
 - I. On the day of 19, he lent the defendant rupees repayable on the day of 19.
 - 2. The defendant has not paid the same, except rupees paid on the day of 19.

[If the plaintiff claims exemption from any law of limitation say:—]

- 3. The plaintiff was a minor (or insane) from the day of till the day
- 4. [FACTS SHOWING WHEN THE CAUSES OF ACTION AROSE AND THAT THE COURT HAS JURISDICTION.]
- 5. The value of the subject-matter of the suit for the purpose of jurisdiction is rupees and for the purpose of court-fees is rupees.
- 6. The plaintiff claims rupees, with interest at per cent. from the day of 19.

No. 2.

MONEY OVERPAID.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-

the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver.

2. The plaintiff procured the said bars to be assayed by E. F., who was paid by the defendant for such assay, and

E. F. declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid the defendant rupees.

3. Each of the said bars contained only 1,270 tolas of fine silver, of which facts the plaintiff was ignorant when he

made the payment.

4. The defendant has not repaid the sum so overpaid.

[AS IN PARAS. 4 AND 5 OF FORM NO. I, AND RELIEF CLAIMED.]

No. 3.

GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. On the day of 19, E. F. sold and delivered to the defendant (one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods).

2. The defendant promised to pay rupees for the said goods on delivery (or on the day of , SOME

DAY BEFORE THE PLAINT WAS FILED).

3. He has not paid the same.

4. E. F. died on the day of 19. By his last will he appointed his brother, the plaintiff, his executor.

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff as executor of E. F. CLAIMS (RELIEF CLAIMED).

No. 4.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. On the day of 19 ,
plaintiff sold and delivered to the defendant (SUNDRY ARTICLES
OF HOUSE-FURNITURE), but no express agreement was made as

to the price.

2. The goods were reasonably worth

rupees.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 5.

GOODS MADE AT DEFENDANT'S REQUEST, AND NOT AC-CEPTED.

(TITLE.)

A. B., the above named plaintiff, states as follows:—

I. On the day of 19, B. F. agreed with the plaintiff that the plaintiff should make for him (SIX TABLES AND FIFTY CHAIRS) and that E. F. should pay for the goods on delivery rupees.

2. The plaintiff made the goods, and on the day of 19 offered to deliver them to E. F., and

has ever since been ready and willing so to do.

3. E. F. has not accepted the goods or paid for them.

[As in paras. 4 and 5 of Form No. 1, and Relief Claimed.]

No. 6.

DEFICIENCY UPON A RE-SALE (GOODS SOLD AT AUCTION).

(TITLE.)

A. B., the above-named plaintiff, states as follows:-

I. On the day of 19, the plaintiff put up at auction sundry (GOODS), subject to the condition that all goods not paid for and removed by the purchaser within (TEN DAYS) after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased (ONE CRATE OF CROCKERY)

at the auction at the price of rupees.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for (TEN DAYS) after.

4. The defendant did not take away the goods purchased by him, nor pay for them within (TEN DAYS) after the sale, nor afterwards.

day of On the 19 , the plaintiff re-sold the (CRATE OF CROCKERY), on account of the defendant, by public auction, for rupees.

6. The expenses attendant upon such re-sale amounted

rupees. to

7. The defendant has not paid the deficiency thus arising, amounting to rupees.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 7.

SERVICES AT A REASONABLE RATE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-I. Between the day of 19, and the day of 19 , at tiff (EXECUTED SUNDRY DRAWINGS, DESIGNS AND DIAGRAMS) for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. The services were reasonably worth rupees.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 8.

SERVICES AND MATERIALS AT A REASONABLE COST.

(TITLE.)

A. B., the above-named plaintiff, states as follows:day of plaintiff built a house (known as No. 19 , at , the and furnished the materials therefor, for the defendant, at his request but no express agreement was made as to the amount to be paid for such work and materials.

2. The work done and materials supplied were reasonably worth rupees.

3. The defendant has not paid the money.

[AS IN PARAS. 4 AND 5 OF FORM NO. I, AND RELIEF CLAIMED.]

No. 9.

USE AND OCCUPATION.

(TITLE.)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows:—

I. That the defendant occupied the (house No.

street), by permission of the said X. Y., from the day of 19, until the day of 19, and no agreement was made at to payment for the use of the said premises.

2. That the use of the said premises for the said period

was reasonably worth rupees.

3. The defendant has not paid the money.

[As IN PARAS. 4 AND 5 OF FORM NO. I.]

6. The plaintiff as executor of X. Y. claims (Relief CLAIMED.)

No. 10.

ON AN AWARD.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. On the day of 19, the plaintiff and defendant, having a difference between them concerning (a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay), agreed in writing to submit the difference to the arbitration of E. F. and G. H., and the original document is annexed hereto.

2. On the day of 19, the arbitrators awarded that the defendant should (pay the plain-

tiff rupees).

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. II.

ON A FOREIGN JUDGMENT.

(TITLE.)

A. B., the above-named plaintiff, states as follows: day of I. On the 19 , at

in the State (or Kingdom) of Court of that State (or Kingdom) in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.

2. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 12.

AGAINST SURETY FOR PAYMENT OF RENT.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-On the day of , E. F., hired from the plaintiff for the term of years, the (house No. Street), at the annual rent of rupees, payable (monthly).

The defendant agreed, in consideration of the letting of the premises to E. F., to guarantee the punctual payment

of the rent.

3. The rent for the month of 19 amounting to rupees, has not been paid.

[IF BY THE TERMS OF THE AGREEMENT, NOTICE IS REQUIRED TO BE GIVEN TO THE SURETY, ADD:--]

4. On the day of 19, the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

[As in paras. 4 and 5 of Form No. 1, and Relief Claimed.]

No. 13.

BREACH OF AGREEMENT TO PURCHASE LAND.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. On the day of 19, the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.

(OR, on the day of 19, the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of rupees.)

2. On the day of 19, the plaintiff, being then the aboslute owner of the property [and the same being free from all incumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [OR, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 14.

NOT DELIVERING GOODS SOLD.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the plaintiff and defendant mutually agreed that the defendant should deliver

[one hundred barrels of flour] to the plaintiff on the day of 19, and that the plaintiff should pay therefor

rupees on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[As in paras. 4 and 5 of Form No. 1, and Relief Claimed.]

No. 15.

WRONGFUL DISMISSAL.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-

fendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services rupees [monthly].

2. On the day of 19, the plaintift entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant

always has had notice.

3. On the day of 19, the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 16.

BREACH OF CONTRACT TO SERVE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. On the day of 19, the plaintiff and defendant mutually agreed that the plaintiff should em-

[APP. A.

ploy the defendant at an [annual] salary of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the day

of 19, offered so to do].

3. The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the day of 19, he refused to serve the plaintiff as aforesaid.

[As in paras. 4 and 5 of Form No. 1, and Relief Claimed.]

No. 17.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. On the day of 19, the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [OR STATE THE TENOR OF THE CONTRACT.]

[2. The plaintiff duly performed all the conditions of the

agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner].

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 18.

ON A BOND FOR THE FIDELITY OF A CLERK.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-

r. On the day of 19, the plain-

tiff took E. F. into his employment as a clerk.

2. In consideration thereof, on the day of the defendant agreed with the plaintiff that if E. F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever

loss he might sustain by reason thereof, not execeeding

[OR, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of rupees, subject to the condition that if E. F. should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all moneys, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]

[OR, 2. In consideration thereof on the same date the defendant executed a bond in favour of the plaintiff, and the

original document is hereto annexed.]

3. Between the day of 19, and the day of 19, E. F. received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 19.

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. On the day of 19, the defendant, by a registered instrument, let to the plaintiff [the house No. Street] for the term of years, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened.

necessary to entitle the plaintiff to maintain this suit.

3. On the day of 19, during the said term, E. F., who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of G.H.

and I. J. by such removal].

[As in paras. 4 and 5 of Form No. 1, and Relief Claimed.]

No. 20.

ON AN AGREEMENT OF INDEMNITY.

(TITLE).

A. B., the above-named plaintiff, states as follows:-

I. On the day of 19, the plaintiff and defendant, being partners in trade under the style of A. B. and C. D., dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the

agreement on his part.

3. On the day of 19, [a judgment was recovered against the plaintiff and defendant by E. F., in the High Court of Judicature at , upon a debt due from the firm to E. F., and on the day 19 ,] the plaintiff paid rupees [in satisfaction of the same.

4. The defendant has not paid the same to the plain-

tiff.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 21.

PROCURING PROPERTY BY FRAUD.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the defenda 19 , the defendant , for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was rupees over all his liabilities]. solvent, and worth

The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of

3. The said representations were false [OR STATE TER PARTICULAR FALSEHOODS] and were then known bd the defendant to be so.

4. The defendant has not paid for the goods. [OR, IF THE GOODS WERE NOT DELIVERED.] The plaintiff, in preparing and shipping the goods and procuring their restoration, expended rupees.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 22.

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-

ant represented to the plaintiff that E. F. was solvent and in good credit, and worth rupees over all his liabilities [or that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit.]

2. The plaintiff was thereby induced to sell to E. F. [rice] of the value of rupees [on months credit.]
3. The said representations were false and were then

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or to deceive and injure the plaintiff].

4. E. F. [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice, and

the plaintiff has wholly lost the same.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 23.

POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of

water which flowed and ran into the well to supply the same to

flow or run without being fouled or polluted.

2. On the day of 19, the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[As in paras. 4 and 5 of Form No. 1, and Relief Claimed.]

No. 24.

CARRYING ON A NOXIOUS MANUFACTURE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

r. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called , situate in

Ever since the day of 19 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.

Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and

died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged, to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 25.

OBSTRUCTING A RIGHT OF WAY.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-

The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, or on foot] at all times of the year.

3. On the day of 19, defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along with the way [and has ever since wrongfully obstructed the same].

4. (STATE SPECIAL DAMAGE, IF ANY.)

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 26.

OBSTRUCTING A HIGHWAY.

(TITLE.)

- I. The defendnt wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.
- 2. Thereby the plaintiff, while lawfully passing along the said high way, fell over the said earth and stones [or into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[As in paras. 4 and 5 of Form No. 1, and Relief Claimed.]

No. 27.

DIVERTING A WATER COURSE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter men-

tioned was, possessed of a mill situated on a [stream] known as the ____, in the village of ____, district of

2. By reason of such possession the plaintiff was entitled

to the flow of the stream for working the mill.

day of 3. On the 19, the defendant. by cutting the bank of the stream, wrongfully diverted the

water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 28.

OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-

1. Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

19 , the defendant day of 2. On the prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and

diverting the said stream.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 29.

INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-

19, the defendants day of were common carriers of passengers by railway between I. On the and

2. On that day the plaintiff was passenger in one of the carriages of the defendants on the said railway.

3. While he was such passenger, at [OR near the station of OR between the stations of and], a collision occurred on the said railway caused by the negligence and unskilfulness of the defendant's servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., AND STATE THE SPECIAL DAMAGE, IF ANY, AS], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

[OR THUS:—2. On that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., AS IN PARA. 3.]

No. 30.

INJURIES CAUSED BY NEGLIGENT DRIVING.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at

2. The defendant is a merchant of

- 2. On the day of 19, the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about 3 o'clook in the afternoon. He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.
- 3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and un-

able to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[As in paras. 4 and 5 of Form No. 1, and Relief Claimed.]

No. 31.

FOR MALICIOUS PROSECUTION.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. On the day of 19, the defendant obtained a warrant of arrest from

[a Magistrate of the said city, OR AS THE CASE MAY BE] on a charge of, and the plaintiff was arrested thereon, and imprisoned for [days, OR hours, and gave bail in the sum of rupees to obtain his release.]

2. In so doing the defendant acted maliciously and

without reasonable or probable cause.

3. On the day of 19, the Magistrate dismissed the complaint of the defendant and

acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him: or in consequence of the said arrest, the plaintiff lost his situation as clerk to one E. F.; or in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[As in paras. 4 and 5 of Form No. 1, and Relief | Claimed.]

No. 32.

MOVEABLES WRONGFULLY DETAINED.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, plaintiff owned [OR STATE FACTS SHOWING A RIGHT TO THE POSSES-

SION] the goods mentioned in the schedule hereto annexed [OR DESCRIBE THE GOODS], the estimated value of which is rupees.

2. From that day until the commencement of this suit

the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit, on the day of 19, the plaintiff demanded the same from the defendant, but he refused to deliver them.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims-

(I) delivery of the said goods, or rupees,
 in case delivery cannot be had;

(2) rupees compensation for the detention thereof.

The Schedule.

No. 33.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. On the day of 19, the defendant C. D., for the purpose of inducing the plaintiff to

sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities.]

2. The plaintiff was hereby induced to sell and deliver

to C. D. [one hundred boxes of tea], the estimated value of which is rupees.

3. The said representations were false, and were then known by C. D. to be so [or at the time of making the said representations, C. D. was insolvent, and knew himself to be so].

4. C. D. afterwards transferred the said goods to the defendant E. F. without consideration [or who had notice of the falsity of the representation].

[As in paras. 4 and 5 of Form No. 1.]

The plaintiff claims—

 (I) delivery of the said goods, or case delivery cannot be had;
 rupees, in

(2) rupees compensation for the detention thereof.

No. 34.

RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. On the day of 19 the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at contained (ten bighas).

2. The plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an agreement, of which the original is herto annexed. But the land has not been transferred to him.

3. On the day of 19 the plaintiff paid the defendant rupees as part to the purchase-money.

4. That the said piece of ground contained in fact only

(five bighas).

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claimsrupees, with interest from the **(I)** 19 day of

(2) that the said agreement be delivered up and cancelled.

No. 35.

AN INJUNCTION RESTRAINING WASTE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-The plaintiff is the absolute owner of (DESCRIBE THE

PROPERTY). 2. The defendant is in possession of the same under a

lease from the plaint ff.

3. The defendant has (cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale) without the consent of the plaintiff.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[PECUNIARY COMPENSATION MAY ALSO BE CLAIMED.]

No. 36.

Injunction Restraining Nuisance.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of (the house No. Street, Calcutta).

2. The defendant is, and at all the said times was, the absolute owner of (a plot of ground in the same street

3. On the day of defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there (and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff).

[4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.]

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

No. 37.

PUBLIC NUISANCE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-I. The defendant has wrongly heaped up earth and stones on a public road known as Street at so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of the Governor to the institution of this suit.

[As in paras. 4 and 5 of Form No. 1.]

5. The plaintiff claims—

(I) a declaration that the defendant is not entitled to obstruct the passage of the public along the

said public road:

(2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

No. 38.

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

[As IN FORM No. 27.]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 39.

RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(TITLE.)

A. B., the above-named plaintiff, states as follows: --

I. Plaintiff is, and at all times hereinafter mentioned was, the owner of (a portrait of his grand-father which was executed by an eminent painter), and of which no duplicate exists (OR STATE ANY FACTS SHOWING THAT THE PROPERTY IS OF A KIND THAT CANNOT BE REPLACED BY MONEY).

2. On the day of deposited the same for safe-keeping with the defendant.

3. On the day of 19, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate

compensation to the plaintiff for the loss of the (painting).

[As in paras. 4 and 5 of Form No. 1.]

8. The plaintiff claims—

 (I) that the defendant be restrained by injunction from disposing of, injuring or concealing the said (painting);

(2) that he be compelled to deliver the same to the

plaintiff.

No. 40.

INTERPLEADER.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-

I. Before the date of the claims hereinafter mentioned G. H. deposited with the plaintiff (DESCRIBE THE PROPERTY) for (safe-keeping).

2. The defendant C. D. claims the same (under an al-

leged assignment thereof to him from G. H.).

3. The defendant E. F. also claims the same (under an order of G. H. transferring the same to him).

4. The plaintiff is ignorant of the respective rights of the

defendants.

5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

6. The suit is not brought by collusion with either of the

defendants.

[As in paras. 4 and 5 of Form No. 1.]

9. The plaintiff claims—

(I) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;

(2) that they be required to interplead together con-

cerning their claims to the said property;

[(3) that some person be authorised to receive the said property pending such litigation;]

(4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 41.

ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL OTHER CREDITORS.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. E. F., late of , was at the time of his death,
and his estate still is, indebted to the plaintiff in the sum of

[HERE INSERT NATURE OF DEBT AND SECURITY, IF ANY.]

2. E. F., died on or about the day of
. By his last will, dated the day of
he appointed C. D. his executor [or devised his estate in trust,
etc., or died intestate, As THE CASE MAY BE].

3. The will was proved by C. D. [or letters of adminis-

tration were granted, etc.].

4. The defendant has possessed himself of the moveable and immoveable, [or the proceeds of the immoveable] property of E. F. and has not paid the plaintiff his debt.

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims that an account may be taken of the moveable [and immoveable] property of E. F., deceased, and that the same may be administered under the decree of the Court.

No. 42.

ADMINISTRATION BY SPECIFIC LEGATEE.

(TITLE.)

[ALTER FORM No. 41 THUS]-

[OMIT PARAGRAPH I AND COMMENCE PARAGRAPH 2] E.F., late of , died on or about the day of . By his last will, dated the day of

he appointed C. D. his executor, and bequeathed to the plain-tiff [HERE STATE THE SPECIFIC LEGACY].

FOR PARAGRAPH 4 SUBSTITUTE-

The defendant is in possession of the moveable property of E. F., and, amongst other things, of the said [HERE NAME THE SUBJECT OF THE SPECIFIC BEQUEST].

FOR THE COMMENCEMENT OF PARAGRAPH 7 SUBSTITUTE-

The plaintiff claims that the defendant may be ordered to deliver to him the said [HERE NAME THE SUBJECT OF THE SPECIFIC BEQUEST], OR that, etc.

No. 43.

ADMINISTRATION BY PECUNIARY LEGATEE.

(TITLE).

[ALTER FORM No. 41 THUS]-

[OMIT PARAGRAPH I AND SUBSTITUTE FOR PARAGRAPH 2]
E. F., late of , died on or about the day of
. By his last will, dated the day of
he appointed C. D. his executor, and bequeathed to the plaintiff a legacy of rupees.

IN PARAGRAPH 4 SUBSTITUTE "legacy" FOR "debt".

ANOTHER FORM.

(TITLE.)

E. F., the above-named plaintiff, states as follows:—
I. A. B. of K. in the died on the day of
By his last will, dated the day of
he appointed the defendant and M. N. [who died in the testator's lifetime] his executors, and bequeathed his property,
whether moveable or immoveable, to his executors in trust,
to pay the rents and income thereof to the plaintiff for his life;
and after his decease, and in default of his having a son who
should attain twenty-one, or a daughter who should attain
that age or marry, upon trust as to his immoveable property
for the person who would be the testator's heir-at-law,
and as to his moveable property for the persons who

would be the testators next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure, of his issue as aforesaid.

2. The will was proved by the defendant on the day

of . The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property; he has sold some part of the immoveable property.

[As in paras. 4 and 5 of Form No. 1.]

The plaintiff claims—

(1) to have the moveable and immoveable property of A. B. administered in this Court, and for that purpose to have all proper directions given and accounts taken;

(2) such further or other relief as the nature of the

case may require.

No. 44.

EXECUTION OF TRUST.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-

I. He is one of the trustees under an instrument of settlement bearing date on or about the day of made upon the marriage of E. F. and G. H., the father and mother of the defendant [or an instrument of transfer of the estate and effects of E. F. for the benefit of C. D., the defendant, and the other creditors of E. F.]

2. A. B. has taken upon himself the burden of the said trust, and is in possession of [or of the proceeds of] the moveable and immoveable property transferred by the said instru-

3. C. D. claims to be entitled to a beneficial interest under the instrument.

[AS IN PARAS. 4 AND 5 OF FORM NO. I.]

6. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the said, or of part of the said immoveable pro-

perty, or moveable, or the proceeds of the sale of, or of part of, the said moveable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of C. D., the defendant, and all other persons who may be interested in such administration, in the presence of C. D. and such other persons so interested as the Court may direct, or that C. D. may show good cause to the contrary.

[N. B.—WHERE THE SUIT IS BY A BENEFICIARY, THE PLAINT MAY BE MODELLED, mutatis mutandis, ON THE PLAINT

BY A LEGATEE.]

No. 45.

FORECLOSURE OR SALE.

(TITLE.)

A. B., the above-named plaintiff states as follows:-

 The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage:-

(a) (date);

(b) (names of mortgagor and mortgagee);(c) (sum secured);

(d) (sum secured); (d) (rate of interest);

(e) (property subject to mortgage);

(f) (amount now due);

(g) (IF THE PLAINTIFF'S TITLE IS DERIVATIVE STATE SHORTLY THE TRANSFERS OR DEVOLUTION UNDER WHICH HE CLAIMS).

[If the plaintiff is mortgagee in possession, add].

3. The plaintiff took possession of the mortgaged property on the day of and is ready to account as mortgagee in possession from that time].

[As in paras. 4 & 5 of Form No. 1.]

The plaintiff claims—

 (1) payment, or in default [sale or] foreclosure [and possession];

[WHERE ORDER 34, RULE 6, APPLIES.]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

No. 46.

REDEMPTION.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

I. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage:-

(a) (date);

(b) (names of mortgagor and mortgagee);
(c) (sum secured);
(d) (rate of interest);
(e) (property subject to mortgage);

(f) (IF THE PLAINTIFF'S TITLE IS DERIVATIVE, STATE SHORTLY THE TRANSFERS OR DEVOLUTION UNDER WHICH HE CLAIMS).

(IF THE DEFENDANT IS MORTGAGEE IN POSSESSION, ADD)

3. The defendant has taken possession [or has received the rents] of the mortgaged property.

[AS IN PARAS. 4 AND 5 OF FORM NO. I.]

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him and to have possession thereof].

No. 47.

SPECIFIC PERFORMANCE (No. 1).

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

r. By an agreement dated the day of and signed by the defendant, he contracted to buy of [OR sell to] the plaintiff certain immoveable property therein described and referred to, for the sum of rupees.

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the

defendant has had notice.

[As IN PARAS. 4 AND 5 OF FORM NO. I.]

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit.

No. 48.

SPECIFIC PERFORMANCE (No. 2.).

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immoveable

property described in the agreement.

2. On the day of roperty by a sufficient instrument.

3. On the day of 19, the plaintiff again demanded such transfer. [OR the defendant refused to transfer the same to the plaintiff.]

4. The defendant has not executed any instrument of

transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[As in paras. 4 and 5 of Form No. 1.]

8. The plaintiff claims—
(I) that the defendant transfers the said property to the plaintiff by a sufficient instrument [FOLLOWING THE TERMS OF THE AGREEMENT];

(2)rupees compensation for withholding the same.

No. 49.

PARTNERSHIP.

(TITLE.)

A. B., the above-named plaintiff, states as follows:-

I. He and C. D., the defendant, have been for

year [or months] past carrying on business together under articles of partnership in writing [or under a deed, or under a verbal agreement].

- Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners. [OR the defendant has committed the following breaches of the partnership articles:-

[As in paras. 4 and 5 of Form No. 1.]

5. The plaintiff claims—

(1) dissolution of the partnership;

(2) that accounts be taken; (3) that a receiver be appointed.

N. B.—In suits for the winding-up of any partner-SHIP, OMIT THE CLAIM FOR DISSOLUTION; AND INSTEAD INSERT A PARAGRAPH STATING THE FACTS OF THE PARTNERSHIP HAVING BEEN DISSOLVED.)

(4) WRITTEN STATEMENTS.

General defences.

The defendant denies that (SET OUT Denial. FACTS).

The defendant does not admit that (SET OUT FACTS).

but says that The defendant admits that The defendant denies that he is a part-Protest. ner in the defendant firm of

Rescission.

The defendant denies that he made the contract alleged or any contract with the plaintiff.

The defendant denies that he contracted with the plain-

tiff as alleged or at all.

The defendant admits assets but not the plaintiff's claim. The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.

The suit is barred by article or article

of the second schedule to the Indian Limitation Act, 1877. (XV of 1877).

The Court has no jurisdiction to hear the suit on the ground that (SET FORTH THE GROUNDS).

On the day of a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

Insolvency. The defendant has been adjudged an

insolvent.

The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.

Minority. The defendant was a minor at t time of making the alleged contract.

The defendant as to the whole claim (or as to Rs.

Payment into Court part of the money claimed, OR AS THE CASE MAY BE) has paid into Court Rs.

and says that this sum is enough to satisfy the plaintiff's claim (or the part aforesaid).

Performance remitted. The performance of the promise alleged was remitted on the (DATE).

The contract was rescinded by agreement between the plaintiff and defendant.

Res Judicata. The plaintiff's claim is barred by the

The plaintiff is estopped from denying the truth of (INSERT STATEMENT AS TO WHICH ESTOPPEL IS CLAIMED) because (HERE STATE THE FACTS

RELIED ON AS CREATING THE ESTOPPEL).

Since the institution of the suit, that is to say, on the day of (SET OUT FACTS).

No. I.

DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED.

I. The defendant did not order the goods.

2. The goods were not delivered to the defendant.

3. The price was not Rs.

4. 5. Except as to Rs. 6.

, same as $\begin{cases} 1. \\ 2. \\ 3. \end{cases}$

7. The defendant [OR A. B., the defendant's agent] satisfied the claim by payment before suit to the plaintiff or to C. D., the plaintiff's agent] on the day of 19

8. The defendant satisfied the claim by payment after suit to the plaintiff on the day of 19 .

No. 2.

DEFENCE IN SUITS ON BONDS.

The bond is not the defendant's bond.
 The defendant made payment to the plaintiff on the day according to the condition of the bond.

3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

No. 3.

DEFENCE IN SUITS ON GUARANTEES.

r. The principal satisfied the claim by payment before suit.

2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

No. 4.

DEFENCE IN ANY SUIT FOR DEBT.

I. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows:-

| | Rs. |
|---|---------|
| 1907, January, 25th | 150 |
| 1907, January, 25th ,, February, 1st | 50 |
| | |

Total

As to the whole [or as to Rs. , part of the money claimed] the defendant made tender before suit of Rs.
 and has paid the same into Court.

No. 5.

DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

I. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to

of Street, Calcutta, livery stable keepers employed by the the defendant to supply him with carriages and horses; and the person under whose charge and control the

said carriage was, was the servant of the said

2. The defendant does not admit that the said carriage was turned out of Middleton Street either negligently, suddenly or without warning, or at a rapid or dangerous pace.

- denly or without warning, or at a rapid or dangerous pace.

 3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.
- 4. The defendant does not admit the statements contained in the third paragraph of the plaint.

No. 6.

DEFENCE IN ALL SUITS FOR WRONGS.

I. Denial of the several acts [or matters] complained of.

No. 7.

DEFENCE IN SUITS FOR DETENTION OF GOODS.

I. The goods were not the property of the plaintiff.

2. The goods were detained for a lien to which the de-

fendant was entitled.

Particulars are as follows:—

1907, May 3rd. To carriage of the goods claimed from Delhi to Calcutta:—

45 maunds at Rs. 2 per maund .. Rs. 90

No. 8.

DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT.

- The plaintiff is not the author [ASSIGNEE, ETC.]
- The book was not registered.
- The defendant did not infringe. 3.

No. 9.

DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK.

The trade mark is not the plaintiff's.

The alleged trade mark is not a trade mark. 2.

The defendant did not infringe. 3.

No. 10.

DEFENCE IN SUITS RELATING TO NUISANCES.

I. The plaintiff's lights are not ancient [or deny his other alleged prescriptive rights].

2. The plaintiff's lights will not be materially interfered

with by the defendant's buildings.

3. The defendant denies that he or his servants pollute

the water [or do what is complained of].

IF THE DEFENDANT CLAIMS THE RIGHT BY PRESCRIPTION OR OTHERWISE TO DO WHAT IS COMPLAINED OF, HE MUST SAY SO, AND MUST STATE THE GROUNDS OF THE CLAIM, i. e., WHETHER BY PRESCRIPTION, GRANT OR WHAT.]

4. The plaintiff has been guilty of laches of which the

following are particulars:-

1870. Plaintiff's mill began to work. 1871. Plaintiff came into possession.

1883. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [IF OTHER GROUNDS ARE RELIED ON, THEY MUST BE STATED, e.g., LIMITATION AS TO PAST DAMAGE.]

No. II.

DEFENCE TO SUIT FOR FORECLOSURE.

- The defendant did not execute the mortgage.
- The mortgage was not transferred to the plaintiff

(IF MORE THAN ONE TRANSFER IS ALLEGED, SAY WHICH IS DE-

3. The suit is barred by article of the sec-

cond schedule to the Limitation Act 1977.

4. The following payments have been made, viz:—

(INSERT DATE) .. I,000 (INSERT DATE.) .. 500

5. The plaintiff took possession on the of and has received the rents ever since.

6. That plaintiff released the debt on the of

7. The defendant transferred all his interest to A. B. by a document, dated

No. 12.

DEFENCE TO SUIT FOR REDEMPTION.

 The plaintiff's right to redeem is barred by article of the second schedule to the Limitation Act

2. The plaintiff transferred all interest in the property

to A. B.

3. The defendant, by a document dated the day of transferred all his interest in the mortgage-debt and property comprised in the mortgage to A.B.

4. The defendant never took possession of the mortgaged

property, or received the rents thereof.

(If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.)

No. 13.

DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE.

I. The defendant did not enter into the agreement.

2. A. B. was not the agent of the defendant (IF ALLEGED BY PLAINTIFF).

3. The plaintiff has not performed the following condi-

tions—(CONDITIONS).

4. The defendant did not-(ALLEGED ACTS OF PART PER-FORMANCE).

5. The plaintiff's title to the property agreed to be sold

is not such as the defendant is bound to accept by reason of the following matter-(STATE WHY).

6. The argreement is uncertain in the following respects

-(STATE THEM).

7. (OR) The plaintiff has been guilty of delay. 8. (OR) The plaintiff has been guilty of fraud (OR misrepresentation).

(OR) The agreement is unfair.

10. (OR) The agreement was entered into by mistake.

II. The following are particulars of (7), (8), (9), (10) (or AS THE CASE MAY BE).

12. The agreement was rescinded under Conditions of

Sale, No. II (OR) by mutual agreement.

(IN CASES WHERE DAMAGES ARE CLAIMED AND THE DEFENDANT DISPUTS HIS LIABILITY TO DAMAGES, HE MUST DENY THE AGREE-MENT OR THE ALLEGD BREACHES, OR SHOW WHATEVER OTHER GROUND OF DEFENCE HE INTENDS TO RELY ON, e. g., THE LIMITATION ACT, ACCORD AND SATISFACTION, RELEASE, FRAUD, ETC.).

No. 14.

DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE.

I. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immoveable property which the defendant sold and which produced the net sum of Rs. and the testator had some moveable property which the defendant got in, and which produced the net sum of Rs.

2. The defendant applied the whole of the said sums and which the defendant received the sum of Rs. from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of

the testator.

3. The defendant made up his accounts and sent a copy

thereof to the plaintiff on the day of

19, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to

pay the costs of this suit.

No. 15.

PROBATE OF WILL IN SOLEMN FORM.

I. The said will and codicil of the deceased were not duly executed.

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound

mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant's present knowledge, being [SATE THE NATURE OF THE FRAUD].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [or of the contents of the residuary clause in the said

will, AS THE CASE MAY BE].

6. The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims—

(I) that the Court will pronounce against the said will and codicil propounded by the plaintiff:

(2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law.

No. 16.

PARTICULARS. (O. 6, r. 5.)

(TITLE OF SUIT.)

The following are the particulars of (HERE STATE THE MATTERS IN RESPECT OF WHICH PARTICULARS HAVE BEEN ORDERED) delivered persuant to the order of the

(HERE SET OUT THE PARTICULARS ORDERED IN PARAGRAPHS
IF NECESSARY.)

APPENDIX B.

PROCESS.

No. I.

SUMMONS FOR DISPOSAL OF SUIT (O. 5, rr. 1, 5.)

(TITLE.)

To

[NAME, DESCRIPTION AND PLACE OF RESIDENCE.]

WHEREAS

has instituted a suit against you for
you are hereby summoned to appear in this Court in person
or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied
by some person able to answer all such questions, on the
day of

19, at o'clock in
the
noon, to answer the claim; and as
the day fixed for your appearance is appointed for the final
disposal of the suit, you must be prepared to produce on that
day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined

in your absence.

of

GIVEN under my hand and the seal of the Court, this day

JUDGE.

Notice.—I. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree,

which may be against your person or property, or both.

No. 2.

SUMMONS FOR SETTLEMENT OF ISSUES. (O. 5, IT. I, 5.)

(TITLE.)

To

[NAME AND DESCRIPTION AND PLACE OF RESIDENCE.]

WHEREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the

day of 19, at o'clock in the noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely

in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day

of 19 .

JUDGE.

Notice—I. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court and on depositing the necessary expenses.

 If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property,

or both.

No. 3.

SUMMONS TO APPEAR IN PERSON. (O. 5, r. 3.)

(TITLE.)

To

[NAME, DESCRIPTION AND PLACE OF RESIDENCE.]

Whereas
has instituted a suit against you for
you are hereby summoned to appear in this Court in person
on the day of 19, at o'clock
in the noon, to answer the claim; and you
are directed to produce on that day all the documents upon

which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined

in your absence.

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

¹No. 4.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT. (O. 37, r. 2.)

(TITLE.)

(NAME, DEXCRIPTION AND PLACE OF RESIDENCE.)

has institued a suit against you WHEREAS under Order XXXVII of the Code of Civil Procedure, 1977, , balance of principal and for Rs. of which terest due to him as the of a a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding and the sum of Rs. for the sum of Rs. the costs '[together with such interest, if any, from the date of the institution of the suit as the Court may order].

Form No. 4 inserted wide Notification 3-L/85 published in Government issette, dated 8th Bhadon 1985.

Added wide Act 14 of 1988 published in Government Gazette, dated 12th Chet 1988.

Leave to appear may be obtained on an application to the Court suported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

Given under my hand and the seal of the Court, this day

of

· Judge.

No. 5.

19

NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS CO-PLAINTIFF. (O. I, r. 10.)

(TITLE.)

To

[NAME, DESCRIPTION AND PLACE OF RESIDENCE.]

Whereas has instituted the above suit against for and where as it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved:

Take notice that you should on or before the day of 19, signify to this Court whether

you consent to be so added.

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

No. 6.

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT. (O. 22, r. 4.)

(TITLE.)

To

Whereas the plaintiff instituted a suit in this Court on the day of 19, against the defendant who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said deceased, and desiring that you be made the defendant in his stead:

You are hereby summoned to attend in this Court on the day of 19 at A.M. to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court this day

of 19 .

JUDGE.

No. 7.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT. (O. 5, r. 21.)

(TITLE.)

WHEREAS it is stated that

defendant/witness in the above suit is at present residing in : It is ordered that a summons returnable on the day of 19, be forwarded to the Court of for service on the said defendant/witness with a duplicate of this proceeding.

The court-fee of chargeable in respect to the summons has been realised in this Court in stamps

dated 19.

JUDGE.

No. 8.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PRISONER. (O. 5, r. 24.)

(TITLE.)

To

The Superintendent of the Jail at
Under the provision of Order V, rule 24, of the Code of
Civil Procedure, 1977, a summons in duplicate is herewith
forwarded for service on the defendant who is
a prisoner in jail. You are requested to cause a
copy of the said summons to be served upon the said defendant,
and to return the original to this Court signed by the said
defendant, with a statement of service endorsed thereon by
you.

Judge.

No. 9.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC SERVANT OR SOLDIER. (O. 5, 11. 27, 28.)

(TITLE.)

To

Under the provisions of Order V, rule 27 (OR 28, AS THE CASE MAY BE), of the Code of Civil Procedure, 1977, a summons in duplicate is herewith forwarded for service on the defendant who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

JUDGE.

No. 10.

To accompany Returns of Summons of another Court (O. 5, r. 23.)

(TITLE.)

Read proceeding from the

forwarding for service

on in suit No. Court. of 19

of that

Read Serving Officer's endorsement stating that the and proof of the above having been duly taken by me on the oath of and

it is ordered that the

be with

returned to the a copy of this proceeding.

JUDGE.

Mors -This form will be applicable to process other than summons the service of which may have to be effected in the same manner.

No. II.

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR NOTICE. (O. 5, r. 18.)

(TITLE.)

The Affidavit of
I
and say as follows:—
son of
make oath/affirm

(1) I am a process-server of this Court.

ed a summons/notice issued by the Court of in Suit No.

of 19, in the said Court, dated the day of

19 for service on

(3) The said was at the time personally known to me, and I served the said summons/notice on him/her on the day of o'clock in the noon at by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice.

(a) (b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said not being personally known to accompanied me to and pointed out to me a person whom he stated to be the said and I served the said summons/notice on him/her on the day of o'clock in the noon at by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice.

(1) (b)

⁽a) Here state whether the person served signed or refused to sign the process and in whose presence.

(3) The said, and the house in which he ordinarily resides being personally known to me, I went to the said house, in and there on the day of 19, at about o'clock in the noon, I did not find the said.

(a)

(a) Enter fully and exactly the manner in which the process was served, with epecial reference to Order 5, rules 15 and 17.

(b) Signature of process server.

OF,

(3) One accompanied me to and there pointed out to me which he said was the house in which ordinarily resides. I did not find the said there.

(a)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn/Affirmed by the said day of

before me this

19 .

EMPOWERED UNDER SECTION 139 OF THE CODE OF CIVIL PROCEDURE, 1977, TO ADMINISTER OATH TO DEPONENTS.

No. 12.

NOTICE TO DEFENDANT. (O. 9, r. 6.)

(TITLE.)

To

(NAME, DESCRIPTION AND PLACE OF RESIDENCE.)

Whereas this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from

the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons.

Notice is hereby given to you that the hearing of the suit

is adjourned this day and that the day of

is now fixed for the hearing of the same, in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this

day of

JUDGE.

No. 13.

SUMMONS TO WITNESS. (O. 16, 17. 1, 5.)

(TITLE.)

To

Whereas your attendance is required to behalf of the in the above suit, you are hereby required [personally] to appear before this Court on the day of rg, at o'clock in the forenoon, and to bring with you [or to send to this Court]:

A sum of Rs.

, being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil

Procedure, 1977.

GIVEN under my hand and the seal of the Court, this day of 19.

JUDGE.

Notice.—(I) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the

day specified.

No. 14.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS. (O. 16, r. 10.)

(TITLE.)

To

Whereas it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law: and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1977, issued requiring the attendance of the witnsess in this Court on the day of 19 at o'clock in the forenoon and from day to day until he shall have leave to depart: and if the witnsess fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this day

of 19

JUDGE.

No. 15.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS. (O. 16, r. 10.)

(TITLE.)

To

Whereas it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1977, issued, requiring the attendance of the witness in this Court on the day of 19 at o'clock in the foremoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour afore-

said he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this day of 19.

JUDGE.

No. 16.

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS. (O. 16, r. 10.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS the witness

cited by

has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment property belonging to the said witness to the value of and to submit a return, accompanied with an inventory thereof, within days

GIVEN under my hand and the seal of the Court, this

day of 19

JUDGE.

No. 17.

WARRANT OF ARREST OF WITNESS. (O. 16, r. 10.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS
summons but has failed to attend [absconds and keeps out of the way for the purpose of avoiding service of a summons];
You are hereby ordered to arrest and bring the said before the Court.

You are further ordered to return this warrant on or before the day of 19 with an
endorsement certifying the day on and the manner in which
it has been executed, or the reason why it has not been
executed.

GIVEN under my hand and the seal of the Court, this

day of 19

JUDGE.

No. 18.

WARRANT OF COMMITTAL. (O. 16, r. 16.)

(TITLE.)

To

The Officer in charge of the Jail at

WHEREAS the plaintiff (or defendant) in the above-named suit has made application to this Court that security be taken for the appearance of to give evidence (or to produce a document), on the day of

19; and whereas the Court has called upon the said to furnish such security, which he had

failed to do; This is to require you to receive the said

into your custody in the civil prison and to produce him before this Court at on the said day and on such other day or days as may be hereafter ordered.

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

No. 19.

WARRANT OF COMMITTAL. (O. 16, r. 18.)

(TITLE.)

To]

The Officer in charge of the Jail at

dence (or to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (or defendant), the said cannot give such evidence (or produce such document); and whereas the Court has called upon the said to give security for his appearance on the day of

which he has failed to do; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the

day of 19.

of GIVEN under my hand and the seal of the Court, this day

APPENDIX C.

DISCOVERY, INSPECTION AND ADMISSION ..

No. I.

ORDER FOR DELIVERY OF INTERROGATORIES. (O. 11, r. 1.)

In the Court of Civil Suit No.

of

19 .

A. B.

PLAINTIFF.

AGAINST

C. D., E. F. and G. H.

DEFENDANTS.

Upon hearing and upon reading the affidavit of filed the day of personal control of the day of the deliver to the day of the day of the deliver to the day of deliver to the day of deliver to the de

No. 2.

INTERROGATORIES. (O. 11, r. 4.)

(TITLE AS IN No. I, supra.)

Interrogatories on behalf of the above-named [PLAINTIFF OR DEFENDANT C.D.] for the examination of the above-named [DEFENDANTS E. F. and G. H. OR PLAINTIFF].

I. Did not, etc.

2. Has not, etc.

etc., etc., etc. [The defendant E. F. is required to answer the interrogatories numbered ...]

[The dependant G. H. is required to answer the interrogatories numbered .]

No. 3.

Answer to Interrogatories. (O. 11, r. 9.)

(TITLE AS IN No. I, supra.)

The answer of the above-named defendant E. F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named

E. F., make oath and say as follows:-

I.) Enter answers to interrogatories in paragraphs

2. I numbered consecutively.

3. I object to answer the interrogatories numbered on the ground that [STATE GROUNDS OF OBJECTION].

No. 4.

ORDER FOR AFFIDAVIT AS TO DOCUMENTS. (O. 11, r. 12.)

(TITLE AS IN No. 1, supra.)

Upon hearing It is ordered that the do within from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be

No. 5.

AFFIDAVIT AS TO DOCUMENTS. (O. 11, r. 13.)

(TITLE AS IN No. I, supra.)

- I, the above-named defendant C. D., make oath and say as follows:-
- I. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto [STATE GROUNDS

OF OBJECTION].

3. I have had, but have not now, in my possession power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [STATE WHEN AND WHAT HAS BECOME OF THEM,

AND IN WHOSE POSSESSION THEY NOW ARE].

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 6.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION. (O. 11, r. 14.)

(TITLE AS IN No. I, supra.)

and upon reading the affidavit Upon hearing day of of filed the do, at all reasonable times on It is ordered that the the situate at reasonable notice, produce at , and following documents, namely be at liberty to inspect and peruse that the the documents so produced, and to make notice, of their con-In the meantime it is ordered that, all further proceedings be stayed and that the costs of this application be

No. 7.

NOTICE TO PRODUCE DOCUMENTS. (O. 11, r. 16.)

(TITLE AS IN No. I, supra.)

Take notice that the [PLAINTIFF OR DEFENDANT] requires you to produce for his inspection the following documents

referred to in your [plaint or written statement or affidavit day of 19].

[DESCRIBE DOCUMENTS REQUIRED.]

X. Y., Pleader for the

To Z. Pleader for the

No. 8.

NOTICE TO INSPECT DOCUMENTS. (O. 11, r. 17.)

(TITLE AS IN No. I, supra.)

Take notice that you can inspect the documents mentioned in your notice of the day of 19, [EXCEPT THE DOCUMENTS NUMBERED IN THAT NOTICE]

AT [INSERT PLACE OF INSPECTION] on Thursday next, the instant, between the hours of 12 and 4 o'clock.

OR, that the [PLAINTIFF OR DEFENDANT] objects to giving you inspection of documents mentioned in your notice of the day of 19, on the ground

that [STATE THE GROUND]:-

No. 9.

NOTICE TO ADMIT DOCUMENTS. (O. 12, r. 3.)

(TITLE AS IN No. I, supra.)

Take notice that the plaintiff (or defendant) in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (or plaintiff) his pleader or agent, at on between the hours of; and the defendant [or plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively saving all just exceptions to the admissibility of all

such documents as evidence in this suit.

G. H., PLEADER [OR AGENT] FOR PLAINTIFF [OF DEFENDANT].

To E. F., PLEADER [OF AGENT] FOR DEFENDANT [OF PLAINTIFF].

[Here describe the documents and specify as to each document whether it is original or a copy.]

No. 10.

NOTICE TO ADMIT FACTS. (O. 12, r. 5).

(TITLE AS IN No. I, supra.)

Take notice that the plaintiff [OR defendant] in this suit requires the defendant (OR plaintiff to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [OR plaintiff] is hereby required; within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit,

G. H., PLEADER [OF AGENT] FOR PLAINTIFF [OF DEFENDANT]. TO E. F., PLEADER [OF AGENT] FOR DEFENDANT [OF PLAINTIFF].

The facts, the admission of which is required, are-

I. That M. died on the 1st January, 1890.

2. That he died intestate.

3. That N. was his only lawful son.

4. That O. died on the 1st April, 1896.

5. That O. was never married.

No. II.

ADMISSION OF FACTS PURSUANT TO NOTICE. [O. 12, r. 5.]

(TITLE AS IN No. I, supra.)

The defendant [OR plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified subject to the qualifications or limita-

tions, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence

in this suit:

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion or by any one other than the plaintiff [or defendant or party requiring the admission].

E. F., PLEADER [OF AGENT] FOR DEFENDANT [OF PLAINTIFF]. To G. H., PLEADER [OF AGENT] FOR PLAINTIFF [OF DEFENDANT].

| | Facts admitted. | | Qualifications or limitations, if any, subject to which the, are admitted. |
|----|----------------------------|--------------|--|
| 1. | That M. died on the | Ist January, | 1. |
| 3. | That he died intestate | | 2. |
| 8. | That N. was his lawful son | | 3. But not that he was his only lawful son. |
| 4. | That O. died | | & But not that he died on the Ist April, |
| 5. | That O, was never married | - | 1996. & |
| | | | |

No. 12.

NOTICE TO PRODUCE (GENERAL FORM). (O. 12, r. 8.)

(TITLE AS IN No. I, supra.)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly

G. H., PLEADER [OF AGENT] FOR PLAINTIFF [OF DEFENDANT]. TO E. F., PLEADER [OF AGENT] FOR DEFENDANT [OF PLAINTIFF].

APPENDIX D.

DECREES.

No. I.

DECREE IN ORIGINAL SUIT. (O. 20, rr. 6, 7.)

(TITLE.)

Claim for

This suit coming on this day for final disposal before in the presence of for the plaintiff and of for the defendant, it is ordered and decreed that and that the sum of Rs. be paid by the to the on account of the costs of this suit, with interest thereon at the rate of per cent. per annum from this date to date of realization.

GIVEN under my hand and the seal of the Court, this

day of 19.

JUDGE.

COSTS OF SUIT.

| Plair | ntiff. | Defendant. | | | | | |
|---|------------|------------|----|--|----|----|---|
| 1. Stamp for plaint 2 Do, for power 3. Do, for exhibit 4. Pleader's fee on B 5. Subsistence for witnesses 6. Commissioner's fee 7. Service of process | te. Is. | a. | p. | Stamp for power Do, for petition Pleader's fee subsistence for witnesses Service of process Commissioner's fee; | В. | a. | P |
| Total | | | | Total | | | |

No. 2.

SIMPLE MONEY DECREE. (Section 34.)

(TITLE.)

Claim for

This suit coming on this day for final disposal before in the presence of for for the defendant, the plaintiff and of do pay to the it is ordered that the with interest thereon at the rate of sum of Rs. per cent. per annum from to the date of realization of the said sum and do also pay Rs. the costs of this suit, with interests thereon at the rate of per cent. per annum from this date to the date of realization.

GIVEN under my hand and the seal of the Court, this day of 19

JUDGE.

COSTS OF SUIT.

| Plaintiff. | | | | Defendant. | | | |
|---|-----|-----------|----|--|------|---|---|
| 1. Stamp for plaint 2. Do. for Power 3. Do. for exhibits 4. Pleader's fee on Rs. 5. Subsistence for witnesses 6. Commissioner's fee 7. Service of process | Ra, | a. | p. | Stamp for power Do. for petition Pleader's fee Subsistance for witnesses Service of process Commissoner's fee | R.s. | • | P |
| Total | | | | Total | | - | ~ |

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¹No. 3.

PRELIMINARY DECREE FOR FORECLOSURE.

(Order 34, rule 2.—Where accounts are directed to be taken).

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as

the Commissioner to take the accounts following:-

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might

have been so received;

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgagesecurity, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or

by the terms of the mortgaged-deed.

2. And it is hereby turther ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed-

(i) that the defendant do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of Rs. for

the costs of the suit awarded to the plaintiff;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, reconvey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and fore-closed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may

give such directions as it thinks fit.

Schedule.

No. 3-A.

PRELIMINARY DECREE FOR FORECLOSURE.

(Order 34, rule 2.—Where the Court declares the amount due.)

(TITLE.)

This suit coming on this day, etc.; It is hereby, declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this day is the sum of Rs. of for principal, the sum of Rs. for interest on the said principal, the for costs, charges and expenses (other sum of Rs. than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security, together with interest thereon, and the sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:-

(i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court of the

said sum of Rs.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant or to such person as he appoints, and the plaintiff shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the

plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 4.

FINAL DECREE FOR FORECLOSURE.

(Order 34, rule 3).

(TITLE.)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any), dated the day of and the application of the plaintiff, dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage.

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all rights of redemption of and in the property in the aforesaid preliminary decree mentioned; '[and (if the defendant be in possession of the said mortgaged property) that defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

There has been been a party of the

Worls not required to be deleted.

No. 5.

PRELIMINARY DECREE FOR SALE.

(Order 34, rule 4.—Where accounts are directed to be taken).

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the

Commissioner to take the accounts following:-

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at 6 per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might

have been so received;

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or

by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of and that upon such report

of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed-

(i) that the defendant do pay into Court on or before day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs.

for the costs of the suit awarded to the plaintiff;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, reconvey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges, and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that if the money realised by such sale not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 5-A.

PRELIMINARY DECREE FOR SALE.

(Order 34, rule 4. - When the Court declares the amount due).

(TITLE.)

This suit coming on this day etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal the sum of Rs. for costs, charges and expenses (other than the cost of the suit) properly incurred by the plaintiff in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the plaintiff making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(i) that the defendant do pay into Court on or before day of or any later date up to which time for payment may be extended by the Court, the said sum

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff shall bring into Court all documents in his possession

or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged

property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV, of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force, to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 6.

FINAL DECREE FOR SALE.

(Order 34, rule 5.)

(TITLE.)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated day of and the application of the plaintiff, dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage.

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating

to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such costs, charges, and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

No. 7.

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED.

(Order 34, rule 7. Where accounts are directed to be taken).

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the

Commissioner to take the accounts following:-

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have

been so received;

(iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by

the terms of the mortgage-deed.

2. It is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Com-

venient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed-

(i) that the plaintiff do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court such sum as the Court shall find due and the sum of Rs. for the costs of

the suit awarded to the defendant;

(ii) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may

give such directions as it thinks fit.

Schedule.

No. 7-A.

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR SALE IS PASSED.

(Order 34, rule 7. Where accounts are directed to be taken).

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Com-

missioner to take the accounts following:-

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might

have been so received;

(iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties or, failing such rate, at the same rate as is paybale on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being

in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on

account of interest on the principal sum adjudged due and

thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections, as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the costs of the

suit awarded to the defendant;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the

Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule II, of the Order XXXIV, of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the plaintiff or

other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance, and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 7-B.

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED.

(Order 34, rule 7. Where the Court declares the amount due).

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of the sum of Rs. for principal, this sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:-(i) that the plaintiff do pay into Court on or before -the day of or any later date up to which time for payment may be extended by the Court the said sum of Rs.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that in default of payment as aforesaid the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as

it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 7-C.

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR SALE IS PASSED.

(Order 34, rule 7. Where the Court declares the amount due).

(TITLE.)

This suit coming on this day etc.; It is hereby declared that the amount due to the defendant on the mort-

gage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the cost of this suit awarded to the defendant making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time the payment may be extended by the Court the said sum of Rs.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged

property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such

costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the plaintiff or other

persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance, and that the parties are at liberty to apply to the Court from time to time as they may have occasion and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 7-D.

FINAL DECREE FOR FORECLOSURE IN A REDEMPTION SUIT ON DEFAULT OF PAYMENT BY MORTGAGOR.

(Order 34, rule 8).

(TITLE.)

Upon reading the preliminary decree in this suit on the day of and further orders (if any) dated the day of and the application of the defendant, dated the day of for final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the plaintiff and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned '[and (if the plaintiff be in possession of the said mortgaged property) that the plaintiff shall deliver to the

defendant quiet and peaceable possession of the said mort-

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

No. 7-E.

FINAL DECREE FOR SALE IN A REDEMPTION SUIT ON DEFAULT OF PAYMENT BY MORTGAGOR.

(Order 34, rule 8).

(TITLE.)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any), dated the day of and the application of the defendant, dated the day for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power

relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

No. 7-F.

FINAL DECREE IN A SUIT FOR FORECLOSURE, SALE OR REDEMP-TION WHERE THE MORTGAGOR PAYS THE AMOUNT OF THE DECREE.

(Order 34, rules 3, 5 and 8).

(TITLE.)

This suit coming on this day for further consideration and it appearing that on the day of the mortgagor or the same being a person entitled to redeem, has paid into Court all amounts due to the mortgagee under the preliminary decree, dated the day of the preliminary decree and decreed that:—

(i) the mortgagee do execute a deed of reconveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor '[or, as the case may be, who has redeemed the property or an acknowledgment of the pay-

ment of the amount due in his favour;

(ii) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.

And it is hereby further ordered and decreed that, upon the mortgagee executing the deed of reconveyance or acknowledgment in the manner aforesaid—

(i) the said sum of Rs. be paid out of Court

to the mortgagee;

(ii) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor '[or the person making the payment] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor '[or other person making the payment], the said deed of reconveyance or the acknowledgment in the office of the Sub-Registrar of , and

(iii) '[If the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary decree mentioned to the mortgagor '[or such person as aforesaid who has made

the payment].

Words not required to be defeted.

No. 8.

DECREE AGAINST MORTGAGOR PERSONALLY FOR BALANCE AFTER THE SALE OF THE MORTGAGED PROPERTY.

(Order 34, rule 6 and 8-A).

(TITLE.)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the day of and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Rs. and have been paid to the applicant out of the Court on the day of and that the balance now due to him under the aforesaid decree is Rs.

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defend-

ant, as the case may be) personally;

It is hereby ordered and decreed as follows:-

That the mortgagor (plaintiff or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of Rs. with further interest at the rate of six per cent. per annum from the day of (the date of payment out of Court referred to above) up to the date of realization of the said sum, and the costs of this application.

No. 9.

PRELIMINARY DECREE FOR FORECLOSURE OR SALE.

(Plaintiff.....st Mortgagee,

versus

(Order 34, rules 2 and 4).

(TITLE.)

The suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day

of is the sum of Rs. for principal, sum of the Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage security with interest thereon and the sum of Rs. · for the costs of this suit awarded to the plaintiff, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage-money due thereunder has become payable at

the date of the suit).

2. It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2 '[or (if there are several subsequent mortgagees) that the several parties hereinbefore entitled in the following order to the payment of the sums due to them respectively].

And it is hereby ordered and decreed as follows:-

(i) (a) that defendants or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(b) that defendant No. 1 do pay into Court on or beday of or any later date up to which time for payment has been extended by the Court the said

sum of Rs. due to defendant No. 2; and

(ii) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix or such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No. (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mort-gage or this suit and shall, if so required, deliver up to the de-(who has made the payment) quiet and fendant No. peaceable possession of the said property. In the same of Links

(Similar declarations to be introduced, if defendant No. I pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for

a final decree-

(i) '[in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale] that the defendant jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property; or

(ii) '[in the case of any other mortgage] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;

and

(iii) 'sin the case where a sale is ordered under clause 4 (ii) above] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount pavable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs this suit and such costs, charges and expenses as may payable under rule 10 together with such sul sequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977 and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that if any balance be left, it shall be paid to the defendant No. I or orther persons entitled to receive the same; and

(w) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendand No. 2. the plaintiff and defendant No. 2 or both of them as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against

Words not required to be deleted.

defendant No. I for the amounts remaining due to them respectively.

- 5. And it is hereby further ordered and decreed-
- (a) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (in the same manner as the plaintiff might have done under clause 4 above)—
- '[(i) that defendant No 1 shall thenceforth stand absolutely debarred and fore-closed of and from all right to redeem the mortgaged property described in in the Schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property;] or
- '[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the martgaged property;] and
- (b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shal be deemed to have been discharged and extinguished.
 - 6. And it is hereby further orderd and decreed [in the case where a sale is ordered under clause 5 above]—
- (i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of this suit and such costs, charges and expenses as may be

payable to defendant No. 2 under rule 10, together with such subsequent interest as may be payable under rule 11, of order XXXIV of the birst Schedule to the Code of Civil Procedure. 1977 and that the balance, if any, shall be paid by the befendant No. 1 or other persons entitled to receive the same; and

(ii) that if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the p'aintiff's mortgage or defendant No. 2's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against detendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they have occasion, and on such application or otherwise the Court may give such directions as it thinks

fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

NO. 10.

PRELIMINARY DECREE FOR REDEMPTION OF PRIOR MORTGAGE AND FORECLOSURE OR SALE ON SUBSEQUENT MORTGAGE.

(Plaintiff......nd Mortgagee,

versus

Defendant No. 1...... Mortgagor,
Defendant No. 2...... ist Mortgagee).

(Order 34, rules 2, 4 and 7).

(TITLE.)

The suit coming on this day, etc. It is hereby declared that the amount due to defendant No. 2 on the mort-

gage mentioned in the plaint calculated up to this
of
is the sum of Rs.
for principal, the
sum of Rs.
for costs, charges and expenses (other
than the costs of the suit) properly incurred by defendant No.
2 in respect of the mortgage security with interest thereon and
the sum of Rs.
for the costs of this suit awarded to
defendant No. 2, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has

become payable at the date of the suit).

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff or if (there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively].

3. And it is hereby ordered and decreed as follows:—
(i) (a) that the plaintiff or defendant No. I or one of

them do pay into Court on or before the day

of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2; and

(b) that defendant No. I do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No. 1 or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever has made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver upto the plaintiff or defendant No. I (whoever has made the payment) quiet and peaceable possession of the said property.

(Similar declaration to be introduced, if defendant No. 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the

nature of his mortgage).

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree—

(i) '[in the case of a mortgage by conditional sale or an anamolous mortgage where the only remedy provided for the mortgage-deed is foreclosure and not sale] that the plaintiff and defendant No. I jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the defendant No. 2 quiet and peaceable possession of the said propery; or

(ii) '[in the case of any other mortgage] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power the mortgaged property; and

(iii) '[in the case where a sale is ordered under clause 4(ii) above] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance if any, shall be applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same; and

(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them as the case may be, shall be at liberty (when

such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. I for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed-

(a) that if plaintiff pays into Court to the credit of this suit the amount adjudged due to the defendant No. 2, but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (in the same manner as the defendant No. 2, might have done under clause 4, above)—

¹[(i) that defendant No. I shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet

and peaceable possession of the said property]; or

'(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged propperty;

and (b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed '[in

the case where a sale is ordered under clause 5 above]-

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance,

Words not required to be deleted.

if any, shall be paid to defendant No. I or other persons en-

titled to receive the same; and

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No. 2's mortgage or the plaintiff's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. I for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. II.

PRELIMINARY DECREE FOR SALE.

(Order 34, rule 4).

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to defendant No. 2 on his mortgage calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon and the sum of Rs. for the costs of the suit awarded to defendant No. 2 making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due from defendant No. 2 to the plaintiff in respect of his mortgage).

2. And it is hereby ordered and decreed as follows:—

(i) that defendant No. I do pay into Court on or before the said day of or any later date up to which

time for payment may be extended by the Court the said sum of Rs. due to defendant No. 2;

(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 being at liberty

to pay such amount).

(ii) that, on payment of the sum declared due to defendant No. 2 by defendant No. 1 in the manner prescribed in clause 2(i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1, or, to such person as he appoints, and defendant No. 2 shall, if so required re-convey or re-transfer the property to defendant No. 1 free from the said mortgage clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. I quiet and peaceable possession of the said property; and

(iii) that, upon payment into the Court by defendant No. I of the amount due to defendant No. 2, the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses, as may be payable under rule IO, together with such subsequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall then be paid to defendant No. 2 and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc. [as in sub-clause (ii) of clause 2].

4. And it is hereby further ordered and decreed that, in default of payment by defendants Nos. I and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale,

and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mort-

gaged property.

5. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause I above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and, that if any balance be left, it shall be paid to defendant No. I or other persons entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 or defendant No. 1 (as the case may

be) for the amount of the balance.

7. And it is hereby further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. r makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)-(declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder).

8. And it is hereby further ordered and decreed that the the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court

may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 12.

DECREE FOR RECTIFICATION OF INSTRUMENT.

(TITLE.)

It is hereby declared that the day of 19, does not truly express the intention of the parties to such
And it is decreed that the said be rectified by

No. 13.

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS.

(TITLE.)

It is hereby declared that the , dated the day of 19, and made between and , is void as against the plaintiff and all other creditors, if any, of the defendant .

No. 14.

Injunction against Private Nuisance.

(TITLE.)

men, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

No. 15.

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL.

(TITLE.)

LET the defendant , his contractors, agents and workmen, be perpetually restrained from continuing to erect

upon his premises in any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

No. 16.

Injunction restraining use of Private Road.

(TITLE.)

LET the defendant , his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at , the soil of which belongs to the plaintiff, as a carriageway for the passage of cars, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

No. 17.

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT.

(TITLE.)

It is ordered that the following accounts and inquiries be taken and made; that is to say—

IN CREDITOR'S SUIT-

I. That an account be taken of what is due to the plaintiff and all other creditors of the deceased.

IN SUITS BY LEGATEES-

2. That an account be taken of the legacies given by the testator's will.

IN SUITS BY NEXT-OF-KIN-

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as

next-of-kin (or one of the next-of-kin) of the intestate.

(After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be neces-

sary will follow, emitting the first formal words. The form is continued as in a creditor's suit.)

4. An account of the funeral and testamentry expenses.

5. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the moveable pro-

perty of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same

be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E. F. be receiver in the suit (or proceeding) and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the (and shall give security by bond for the due performance of his duties to the amount of rupees).

ro. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suits, then the following further inquiries be

made, and accounts taken, that is to say-

(a) an inquiry what immoveable property the deceased

was seized of or entitled to at the time of his death;

(b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased or any part thereof;

(c) an account, so far as possible, of what is due to the several incumbrances, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale

hereinafter directed.

or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that G. H. shall have the conduct of the sale of the immoveable property, and shall prepare the

conditions and contracts of sale subject to the approval of the and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries here nbefore directed the shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to

counts be made and taken, and that all other acts ordered to be done be completed, before the day of and that the do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the

day of

15. And, lastly, it is ordered that this suit (or proceeding)

stand adjourned for making final decree to the

day

of

(Such part only of this decree is to be used as is applicable

to the particular case.)

No. 18.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

(TITLE.)

do, on It is odered that the defendant or before the , pay into day of , the balance by the said certi-Court the sum of Rs. ficate found to be due from the said defendant on account of the estate of the testator, and also the sum of Rs. for interest, at the rate of Rs. per cent. per annum, from the day of to the , amounting together to the sum day of of Rs.

2. Let the of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(a) The cost of the plaintiff to Mr.

his attorney (or pleader) or and the costs of the defendant to Mr.

, his attorney (or pleader).

(b) And (IF ANY DEBTS ARE DUE) with the residue of the said sum of Rs.

after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate, of the together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same

be paid to the residuary legatee.

No. 19.

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGA-TEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

(TITLE.)

I. It is declared that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff;

2. And it is ordered that an account be taken of what is

due for principal and interest on the said legacy;

3. And it is also ordered that the defendant do, within weeks after the date of the certificate of the pay to the plaintiff the amount of what shall certify to be due for principal and interest:

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties

differ.

No. 20.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

(TITLE.)

1. Let the of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount

Here insert name of proper officer,

of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaint ff out of the sum of Rs. the balance by the said certificate found to be due from the said defendant on account of the personal estate of E. F., the intestate, within one week after the taxation of the said costs , and let the defendby the said1 ant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:-

(a) Let the defendant, within one week after the taxaas aforesaid, pay tion of the said costs by the1 one-third share of the said residue to the plaintiffs A. B., and C. D., his wife, in her right as the sister and one of the nextof-kin of the said E. F., the intestate.

(b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the

next-of-kin of the said E. F., the intestate.

(c) And let the defendant, within one week after the as aforesaid. taxation of the said cost by the1 pay the remaining one-third share of the said residue to G.H., as the brother and the other next-of-kin of the said E. F., the intestate.

No. 21.

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS.

(TITLE.)

It is declared that the proportionate shares of the parties in the partnership are as follows:-

It is declared that this partnership shall stand dissolved

[or shall be deemed to have been dissolved] as from the

day of and it is ordered that the dissolution thereof as from that day be advertised in the Government Gazette, etc.

be the receiver of the And it is ordered that partnership-estate and affects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:-

I. An account of the credits, property and effects now belonging to the said partnership;

An account of the debts and liabilities of the said

partnership;

3. An account of all dealings and transactions between the p'aint ff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any

subsequent sett'ed accounts.

And it is ordered that the good will of the bus ness heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at Liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the 1 do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of

No. 22.

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNT.

(TITLE.)

It is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follows:-

I. In payment of the debts due by the partnership set forth in the certificate of the amounting in the whole to Rs.

2. In payment of the costs of all parties in this suits

amounting to Rs.

THESE COSTS MUST BE ASCERTAINED BEFORE THE DECREE IS DRAWN UP.]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs.

Here insert name of proper officer.

being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[OR, And that the remainder of the said sum of Rs.

be paid to the said plaintiff (or defendant) in part payment of the sum of Rs. certified to be due to him

in respect of the partnership-accounts.]

4. And that the defendant (or plaintiff] do on or before the day of pay to the plaintiff [or defendant] the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

No. 23.

DECREE FOR RECOVERY OF LAND AND MESNE PROFITS.

(TITLE.)

It is hereby decreed as follows:-

SHITT

I. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.

2. That the defendant do pay to the plaintiff the sum of Rs. with interest thereon at the rate of per cent. per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the suit.

Or

- 2. That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the suit.
- 3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

APPENDIX E.

EXECUTION.

No. I.

Notice to show cause why a Payment or Adjustment should not be recorded as certified.

(O. 21, r. 2.)

(TITLE.)

To

Whereas in execution of the decree in the above-named has applied to this Court that the sum of Rs.

recoverable under the decree has been paid/adjusted and should be recorded as certified, this is to give you notice that you are to appear before this Court on the day of , to show cause why the payment/adjustment aforesaid should not be recorded as certified.

GIVEN under my hand and the seal of the Court, this

day of 19 .

JUDGE.

No. 2.

PRECEPT. (Section 46.)

(TITLE.)

Upon hearing the decree-holder it is ordered that this precept be sent to the Court of at under section 46 of the Code of Civil Procedure, 1977, with directions to attach the property specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

Schedule.

Dated the

day of

19

JUDGE.

No. 3.

ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT (O. 21, r. 6.).

(TITLE.)

Whereas the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of at for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Precedure, 1977, it is

ORDERED.

That a copy of this order be sent to with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the day of 19.

JUDGE.

No. 4.

CERTIFICATE OF NON-SATISFACTION OF DECREE. (O. 21, r. 6).

(TITLE.)

CERTIFIED that no (1) satisfaction of the decre of this Court in Suit No.

of 19, a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the

DELLE US ALL E. T.

day of

19 .

Judge.

No. 5.

CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT. (O. 21, r. 6.)

(TITLE.)

| Number of soft and the Court by wifen the decres was parted. | Numes of parties. | Date of application for exe.ution. | Number of the execution cuse. | Processes fesued and dates of service thereof. | Costs of execution. | Arronat realised. | Bow the case is disposed of. | Remarks, |
|--|-------------------|------------------------------------|-------------------------------|--|---------------------|-------------------|------------------------------|----------|
| 1 | | 3 | -4 | 5 | 6 R. s. p. | 7 R.a.p. | 8 | 9 |
| | | | | | | | | |

SIGNATURE OF

SIGNATURE OF

MOHARRIR IN CHARGE.

JUDGE.

No. 6.

APPLICATION FOR EXECUTION OF DECREE (O. 21, r. 11.)

In the Court of I , decree-holder, hereby apply for execution of

APP. E.]

the decree herein below set forth:-

| No. | Names of parties. | Date of decree. | Whe her any appeal preferred from decree | Payment or adjustment, made if any | Previous application if any, with dute and result. | Amount with interest sue upon the decree or other relief granted thire y to gether with particulars of any order decree. | Amount of costs if any. | Against whom to be executed. | Made in which the assistance of the Court is required. |
|-------------|--------------------------------------|--------------------|---|---------------------------------------|--|--|-----------------------------|------------------------------|--|
| -1 | 2 | 3 | 4 | | 6 | 7 | 8 | 9 | 10 |
| 789 of 1897 | A. B.—t lefatif. C. D —Drieudest. | Ostober 11th 1:97. | Xe. | None. | Rs. 72-6 recor 'ed on application if any dated the 4th March 1899. | Re, 314-8-2 principal interest at 6 per cent. Per annum, (frem date of decree till payment). | Subsequently incurred 8 2 0 | ndant C D. | (W H E N ATTACHMENT AND SALE PROPERTY IS SOUGHT). I pray that the total amount of Rs. (together with interest on the principal sum up to date of payments and the c st of taking out this execution), be roatised by attachment and sile of defendant's moveable proporty as per annexed list and paid to me (W H E N ATTACHMENT AND SALE OF IMMOVE-ABLE REPLETY IS SOUGHT). I pray that the total amoun of Rs (together with interest on the prin it alsum up to date of payment.) and the costs of taking out this execution be relised by the antesment and sale of defendant's immoveable property specified at, the foot of this application and paid to me. |

Ι declare that what is stated herein is true to the best of my knowledge and belief.

SIGNED , DECREE-HOLDER

Dated the

day of

19

(When attachment and sale of immoveable property is sought.)

APP. E.

DESCRIPTION AND SPECIFICATION OF PROPERTY.

The undivided one-third share of the judgment debtor in a house situated in the village of , value Rs. 40, and bounded as follows:-

East by G's house; west by H's house; south by public road; north by private lane and J's house.

declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified

Signed

, decree-holder.

No. 7.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE. (O. 21, r. 16.)

(TITLE.)

To

WHEREAS has made application to this Court for execution of decree in on the allegation Suit No. of 19 that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before on the day of this Court

19 , to show cause why execution should not

be granted.

GIVEN under my hand and the seal of the Courts this 19 day of

UDGE.

No. 8.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN EXECUTION OF A DECREE FOR MONEY. (O. 21, r. 30.)

(TITLE.)

To

The Bailiff of the Court. was ordered by decree of this WHEREAS

Court passed on the

DECREE. Principal Costs of execution further interest Total

day of 19 , in Suit No. of

, to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has These are to not been paid; command you to attach the moveable property of the said as set forth in the schedule hereunto annexed, or which shall be pointed

, and unless

out to you by the said shall pay to you the said sum of the said , the together with Rs. costs of this attachment, to hold the same until further orders

from this Court.

Rs.

You are further commanded to return this warrant on or day of 19 before the with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this 19 day of

Schedule.

JUDGE.

No. 9.

WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE PROPERTY ADJUDGED BY DECREE. (O. 21, r. 31.)

(TITLE.)

Tο

The Bailiff of the Court.

was ordered by decree of this WHEREAS Court passed on the day of 19 , in Suit No. of 19, to deliver to the plaintiff the moveable property (or a share in the moveable property) specified in the schedule hereunto annexed, and whereas the said property (or share) has not been delivered;

These are to command you to seize the said moveable property (or a share of the said moveable property) and to deliver it to the plaintiff or to such

person as he may appoint in his behalf.

GIVEN under my hand and the seal of the Court, this day of 19.

Schedule.

JUDGE.

No. 10.

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT. (O. 21, r. 34.)

(TITLE.)

To

Take notice that on the day of the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of , whereof a draft is hereunto annexed, of the immoveable property specified hereunder, and that the day of 19, is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

DESCRIPTION OF PROPERTY.

GIVEN under my hand and the seal of the Court, this day of 19.

JUDGE.

No. II.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC. (O. 21, r. 35.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS the undermentioned property in the occupancy has been decreed to

tiff in this suit; You are hereby directed to put the said in possession of the same, and you are hereby authorised to remove any person bound by the decree who may refuse to vacate the same.

APP. E.]

GIVEN under my hand and the seal of the Court, day of

Schedule.

JUDGE.

No. 12.

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE. (O. 21, r. 37.)

(TITLE.)

To

Whereas
cation to this Court for execution of decree in suit No.
of 19
by arrest and imprisonment of your person,
you are hereby required to appear before this Court on the
day of
cause why you should hot be committed to the civil prison in
execution of the said decree.

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

No. 13.

WARRANT OF ARREST IN EXECUTION. (O. 21, r. 38.)

(TITLE.)

To

Principal

Execution

Total ...

Interest

Costs

The Bailiff af the Cour .

WHEREAS judged by a decree of the Court in Suit No.

was ad-

of

day of 19, to pay to the decree-holder the sum of Rs.

, dated the

as noted in the margin, and whereas the said sum of Rs.

has not been paid to the said decree-holder in satisfaction of the said decree, these are to command you to arrest

the said judgment-debtor and unless the said judgment-debtor

shall pay to you the said sum of Rs.

for the costs of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the day of , with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

No. 14.

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL. (O. 21, r. 40.)

(TITLE.)

To

The Officer-in-charge of the Jail at

Whereas
been brought before this Court this

19, under a warrant in execution of
a decree which was made and pronounced by the said Court
on the
day of
19, and by
which decree it was ordered that the said

should pay

And whereas the said has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody; You are hereby, in the name of His Highness, commanded and required to take and receive the said into the civil

prison and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, and the Court annas per diem as the rate of the monthly allowance for the subsistence of the said

during the confinement under this warrant of committal.

GIVEN under my signature and the seal of the Court, this
day of

No. 15.

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE. (Sections 58, 59.)

(TITLE.)

The Officer-in-charge of the Jail at UNDER orders passed this day, you are hereby directed to

set free judgment-debtor now in your custody.

Dated

JUDGE.

No. 16.

ATTACHMENT IN EXECUTION.

PROHIBITARY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF. (O. 21, r. 46.)

(TITLE.)

To

Whereas
has failed to satisfy a decree passed against on the
day of 19, in favour of for
Rs.; It is ordered that the defendant
be, and is hereby, prohibited and restrained until the further
order of this Court, from receiving from
the following property in the possession of the said

GIVEN under my hand and the seal of the Court, this day of

No. 17.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS. (O. 21, r. 46.)

(TITLE.)

To

WHEREAS

has failed to satisfy a decree passed against on the

in Suit No.

day of of 19, in favour of

19

for Rs. ; It is ordered that the defendant be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, , and that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court.

GIVEN under my hand and the seal of the Court, this day of 19.

JUDGE.

No. 18.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION.

(O. 21, r. 46.)

(TITLE.)

To

WHEREAS

decree passed against

Defendant and to

, Secretary of

Corporation.
has failed to satisfy a

on the

19 , in Suit No.

day of of 19, in favour of , for Rs.

It is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court,

shares in from making any transfer of the aforesaid Corporation, namely, or from receiving payment of any dividends thereon; and you, , the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this 19

day of

JUDGE.

No. 19.

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY COMPANY OR LOCAL AUTHORITY. (O. 21, r. 48.)

(TITLE.)

To

WHEREAS judgment-debtor in the above-named case, is a (DESCRIBE OFFICE OF JUDGMENT-DEBTOR) receiving his salary (OR allowances) decreeat your hands; and whereas holder in the said case, has applied in this Court, for the attachment of the salary (or allowances) of the said due to him under the decree; to the extent of You are hereby required to withhold the said sum of from the salary of the said and to remit the said sum in monthly instalments of (or monthly instalments) to this Court. GIVEN under my hand and the seal of the Court, this

JUDGE.

No. 20.

19

day of

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT. (O. 21, r. 51.)

(TITLE.)

To

The Bailiff of the Court. WHEREAS an order has been passed by this Court on the day of 19, for the attachment of

You are hereby directed to seize the said and bring the same into Court.

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

No. 21.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

(O. 21, r. 52).

(TITLE.)

To

SIR,

The palintiff having applied, under rule 52 of Order XXI of the Code of Civil Procedure, 1977, for an attachment of certain money now in your hands (HERE STATE HOW THE MONEY IS SUPPOSED TO BE IN THE HANDS OF THE PERSON ADDRESSED, ON WHAT ACCOUNT, ETC.), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be, Sir, Your most obedient servant,

JUDGE.

Dated the

day of

19

No. 22.

NOTICE OF ATTACHMENT OF A DECREE OF THE COURT WHICH PASSED IT. (O. 21, r. 53.)

(TITLE.)

To

The Judge of the Court of

SIR, I have the honour to inform you that the decree obtained

in

APP. E.]

in your Court on the

day of 19 , by

Suit No.

of 19, in which he was

and

was has been attached by this Court on the application of , the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.,

JUDGE.

Dated the

day of

19 .

No. 23.

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE. (O. 21, r. 53.)

(TITLE.)

To

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a day of decree obtained by you on the in Suit , in the Court of of 19, in which was Ιt and was is ordered that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way. GIVEN under my hand and the seal of the Court, this

day of

JUDGE.

19.

No. 24.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY. (O. 21, r. 54.)

(TITLE.)

To

Defendant.

Whereas you have failed to satisfy a decree passed against you on the day of , in Suit No. 19 of 19 ,

in favour of

: It is

for Rs.

ordered that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this day of 19

Schedule.

JUDGE.

No. 25.

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC., IN THE HANDS OF A THIRD PARTY. (O. 21, r. 56.)

(TITLE.)

To

has WHEREAS the following property been attached in execution of a decree in Suit No. 19 , passed on the of , in favour of day of It is ordered for Rs. that the property so attached, consisting of Rs. in currencyin money and Rs. notes, or a sufficient part thereof to satisfy the said decree, APP. E]

shall be paid over by you, the said

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

No. 26.

NOTICE TO ATTACHING CREDITOR. (O. 21, r. 58.)

(TITLE.)

Whereas has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in Suit No.

of 19, this is to give you notice to appear before this Court on
day of 19, the day of 19, either in person or by a pleader of the Court duly instructed to support your claim, as attaching creditor.

Given under my hand and the seal of the Court, this day of 19.

JUDGE.

No. 27.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY (O. 21, r. 66.)

(TITLE).

To

The Bailiff of the Court.

THESE are to command you to sell by auction,
after giving

days' previous notice,
by affixing the same in this court-house and after making due
proclamation, the

tached under a warrant from this Court, dated the day of 19, in execution of

APP E.

a decree in favour of

in Suit No. , or so much of

19 the said property as shall realise the sum of Rs.

being the

of the said decree

and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the day of

, with an endorsement certify-19 ing the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this

day of

19

JUDGE.

No. 28.

NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMA-TION (O. 21, r. 66.)

(TITLE.)

To

JUDGMENT-DEBTOR.

WHEREAS in the above-named suit decree-holder, has applied for the sale of

, the

; You are hereby informed

day

that the , has been fixed for settling the terms of 19 of the proclamation of sale.

GIVEN under my hand and the seal of the Court, this day

of 19

JUDGE.

No. 29.

(O. 21, r. 66.) PROCLAMATION OF SALE.

(TITLE.)

Notice is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure, 1977, an order has been passed by this Court for the sale of the attached property mentioned in the annexed schedule, in satisfaction of the claim of the decree-holder in the suit mentioned in the margin (I), amounting was plaintiff and with costs and interest up to date of sale to the sum of

The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors abovenamed as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale

will be held by

at the monthly sale commencing at o'clock on the

ever, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot

the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorised agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further:—

CONDITIONS OF SALE.

the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to

the provisions of rule 69 of Order XXI.

5. In the case of moveable property, the price of each lot

shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immovable property, the person decclared to be purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holdiday, then on the first

office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be resold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under my hand and the seal of the Court, this

day of

JUDGE.

SCHEDULE OF PROPERTY.

| Number of lot. | Description of property to be sold, with the name of each owner where there are more judgment-debtors than one. | The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government. | Detail of any incumbraness to which the property is liable. | Claims, if any, which have been put for- ward to the property and any other known parti- culars bearing en its nature and value. |
|----------------|---|---|---|--|
| | | | | |
| | | | | |

APP. E

No. 30.

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMA-TION OF SALE. (O. 21, r. 66.)

> (TITLE.) S. N. DAR. S. A. LL. B. SRIN + O + + (Kashmir)

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the day of

, has been fixed for the sale of the said property,

copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the

day of

19 .

Schedule.

JUDGE.

No. 31.

CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RE-SALE OR PROPERTY BY REASON OF THE THE PURCHASER'S DEFAULT. (O. 21, r. 71.)

(TITLE.)

CERTIFIED that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of the default on the part of , purchaser, there was a deficiency in the price of the said property amounting to Rs. and that the expenses attending such re-sale amounted to Rs. , making a total of Rs. , which sum is recoverable from the defaulter.

Dated the

day of

19

OFFICER HOLDING THE SALB.

No. 32.

Notice to Person in Possession of Moveable Property sold in Execution. (O. 21, r. 79.)

(TITLE.)

To

WHEREAS

has become the purchaser at a public sale in execution of the decree in the above suit of

you are hereby prohibited from delivering possession of the said to any person except the said

GIVEN under my hand and the seal of the Court, this

day of

JUDGE.

No. 33.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER. (O. 21, r. 79.)

(TITLE.)

To

and to

WHEREAS
become the purchaser at a public sale in execution of the decree in the above suit of being debts due from you to you;

It is ordered that you be, and you are hereby, prohibited from receiving, and you be, and you are hereby, prohibited from receiving, and you from making payment of, the said debt to any per-

son or persons except the said

GIVEN under my hand and the seal of the Court, this
day of

APP. E.]

No. 34.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION. (O. 21, r. 79.)

(TITLE.)

To

the said

and

, Secretary of Corporation.

WHEREAS

chaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of

standing in the name of you

, It is ordered

, the

be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said , the purchaser aforesaid, or from receiving any dividends thereon; and you Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except

purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this

day of

JUDGE.

No. 35.

CERTIFICATE TO JUDGMENT-DEBTOR AUTHORISING HIM TO MORTGAGE, LEASE OR SELL PROPERTY. (O. 21, r. 83.)

(TITLE.)

Whereas in execution of the decree passed in the above suit an order was made on the day of for the sale of the under-mentioned property of the judgment-debtor and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise

the amount of the decree by mortgage, lease or private sale

of the said property or of some part thereof:

This is to certify that the Court doth hereby authorise the said judgment-debtor to make the proposed mortgage, lease or sale within a period of from the date of this certificate; provided that all moneys payable under such mortgage, lease or sale shall be paid into this Court and not to the said judgment-debtor.

DESCRIPTION OF PROPERTY.

GIVEN under my hand and the seal of Court this day of 19.

JUDGE.

No. 36.

Notice to show Cause why Sale should not be set aside. (O. 21, rr. 90, 92.)

(TITLE.)

To

Whereas the under-mentinoned property was sold on the day of 19 in execution of the decree passed in the above-named suit, and whereas the decree-holder [or judgment-debtor], has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [or fraud] in publishing [or conducting] the sale, namely, that:

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of

19, when the said application will be heard and de-

GIVEN under my hand and the seal of the Court this day of

DESCRIPTION OF PROPERTY.

1643

JUDGE.

and the last

No. 37.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE. (O. 21, II. 91, 92.)

(TITLE.)

To

of the under-mentioned property sold on the of the decree passed in the above-named suit, has applied to this Court to set aside the sale of the said property on the ground that that the court that the

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of

when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of

DESCRIPTION OF PROPERTY.

JUDGE.

No. 38.

CERTIFICATE OF SALE OF LAND. (O. 21, r. 94.)

(TITLE.)

This is to certify that has been declared the purchaser at a sale by public auction on the day of 19, of

of decree in this suit, and that the said sale has been duly confirmed by this Court.

of GIVEN under my hand and the seal of the Court, this day

No. 39.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION. (O. 21, r. 95.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS
the certified purchaser of
sale in execution of decree in suit No. of 19; You are hereby ordered to put the said; the certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this day

of 19

JUDGE.

No. 40.

Summons to appear and answer Charge of Obstructing Execution of Decree. (O. 21, r. 97.)

(TITLE.)

To

WHEREAS

decree-holder in the above suit, has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession:

You are hereby summoned to appear in this Court on the day of 19 at A.M.,

to answer the said complaint.

GIVEN under my hand and the seal of the Court, this
day of 19.

No. 41.

WARRANT OF COMMITTAL. (O. 21, r. 98.)

(TITLE.)

To

The Officer in Charge of the Jail at

WHEREAS the undermentioned property has been decreed to
the plaintiff in this suit, and whereas the Court without any just cause resisted [or obstructed] and is still resisting [or obstructing] the said in obtaining possession of the property, and whereas the said has made application to this Court be committed to the civil prison:

You are hereby commanded and required to take and receive the said into the civil prison and to keep him imprisoned therein for the period of days.

GIVEN under my hand and the seal of the Court, this day

JUDGE.

No. 42.

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

(Section 72.)

(TITLE.)

To

of

. Collector of

SIR,

In answer to your communication No. , dated , representing that the sale in execution of the decree in this suit of land situate within your district is objectionable, I have the houour to inform you that you are authorised to make provision for the satisfaction of the said decree in the manner recommended by you.

I have the honour to be, Sir, Your most obedient servant,

APPENDIX F.

SUPPLEMENTAL PROCEEDINGS.

No. 1.

WARRANT OF ARREST BEFORE JUDGMENT. (O. 38, r. 1.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS
, the plaintiff in the above suit claims the sum of Rs.
as noted in the margin, and

has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to

. These are to

command you to demand and receive from the said

the sum of Rs. as sufficient to satisfy the plaintiff's claim,

and unless the said sum of Rs.

is forthwith delivered to you by or on

Principal ...
Interest ...
Costs ...

into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security to the amount of Rs. for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

GIVEN under may hand and the seal of the Court, this day

of 19

JUDGE.

No. 2.

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT. (O. 38, r. 2.)

(TITLE.)

WHEREAS at the instance of the plaintiff the above suit, the defendant, the defendant,

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance,

the Court has ordered him to furnish such security:

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit: and in default of such appearance I bind myself, my heirs and executors to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at

this day of

19

(SIGNED).

Witnesses.

I.

2.

No. 3.

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE. (O. 38, r. 3.)

(TITLE.)

To

WHEREAS , who became surety on the day of 19 for your appearance in the above suit, has applied to this Court to be discharged from his obligation:

You are hereby summoned to appear in this Court in person on the day of 19, at A. M., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19.

JUDGE.

No. 4.

ORDER FOR COMMITTAL. (O. 38, r. 4.)

(TITLE.)

To

WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance

of , the defendant, to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him, until satisfaction of the decree.

of GIVEN under my hand and the seal of the Court, this day

JUDGE.

No. 5.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE. (O. 38, r, 5.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS has proved to the satisfaction of the

Court that the defendant in the above suit

These are to command you to call upon the said defendbefore the day of 19 on or ant either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him; or to appear and show cause why he should not furnish security; and you are further ordered to attach the and keep the same under safe and secure said custody until the further order of the Court; and you are further commanded to return this warrant on or before the

day of 19, with an endorsement certifying the date on which and the manner in which it has been execut-

ed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this

day of 19

No. 6.

SECURITY FOR THE PRODUCTION OF PROPERTY (O. 38, r. 5.)

(TITLE.)

Whereas at the instance of the plaintiff in the above suit, the defendant has been directed by the Court to furnish security in the sum of Rs. to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed;

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing, I bind myself, my heirs and executors, to pay to the said Court, at its order, the said sum of Rs.

or such sum not exceeding the said sum as the said Court

may adjudge.

Schedule.

Witness my hand at

this

day of

Witnesses.

(Signed.)

I.

2.

No. 7.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY. (O. 38, r. 6.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS, the plaintiff in this suit, has applied to the Court to call upon, the

defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said to furnish such security, which he has failed to do: These are to command you to attach, the property of the said, and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the day of with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

No. 8.

TEMPORARY INJUNCTIONS. (O. 39, r. 1.)

(TITLE.)

Upon motion made unto this Court by Pleader of [or Counsel for] the plaintiff A. B., and upon reading the petition of the said plaintiff in this matter filed [this day] [or the plaint filed in this suit on the day of , or the written statement of the said plaintiff and filed on the day of upon hearing the evidence of and in support thereof [IF AFTER NOTICE AND DEFENDANT NOT APPEARING: ADD, and also the evidence of as to service of notice of this motion upon the defendant C.D.]: This Court doth order that an injunction be awarded to restrain the defendant C. D., his servants, agents and workmen, from pulling down or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [OR in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned], being No. 9, Oilmongers Street, Hindupur, in the Tehsil of , and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court. day of Dated this

[WHERE THE INJUNCTION IS SOUGHT TO RESTRAIN THE NEGOTIA-TION OF A NOTE OR BILL, THE ORDERING PART OF THE ORDER NAY RUN THUS:—]

from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [or bill of exchange] in question, dated on or about the etc., mentioned in the plaintiff's plaint [or petition] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[IN COPYRIGHT CASES]

defendant C. D., his servants, agents or workmen, from printing, publishing or vending a book, called or any part thereof, until the, etc.

[WHERE PART ONLY OF A BOOK IS TO BE RESTRAINED].

or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [or petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled and also that part which is entitled [or which is contained in page to page both inclusive] until etc.

[IN PATENT CASES]

to restrain the defendant C. D., his agents, servants and workmen, from making or vending any perforated bricks [OR as THE CASE MAY BE] upon the principle of the inventions in the plaintiff's plaint [OR petition, etc., OR written statement, etc.,] mentioned, belonging to the plaintiffs', or either of them. during the remainder of the respective terms of the patents in the plaintiff's plaint [OR as THE CASE MAY BE] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[IN CASES OF TRADE MARKS]

defendant C. D., his servants, agents or workmen, from selling,

or exposing for sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint [or petition, etc.] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B., until the, etc.

[TO RESTRAIN A PARTNER FROM IN ANY WAY INTERFERING IN THE BUSINESS.]

to restrain the defendant C. D., his agents and servants, from entering into any contract, and from accepting, drawing endorsing or negotiating any bill of exchange, note or written security in the name of the partnership-firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

No. 9.

APPOINTMENT OF A RECEIVER. (O. 40, r. 3.)

(TITLE.)

To

of a decree passed in the above suit on the day of 19, in favour of; You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1977, with full powers under the provisions of that order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property . You will be entitled to remuneration at the per cent. upon your receipts under the rate of authority of this appointment.

GIVEN under my hand and the seal of the Court, this

19 . day

JUDGE.

No. 10.

BOND TO BE GIVEN BY RECEIVER. (O. 40, r. 3.)

(TITLE.)

Know all men by these presents, that we, and , are jointly and severally bound to in Rs. to be paid to the of the Court of or his successor in office for the time being. said For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents. day of

Dated this

Whereas a plaint has been filed in this Court by for the purpose of [HERE INSERT THE against OBJECT OF SUIT]:

has been appointed, And whereas the said by order of the above-mentioned Court, to receive the rents and profits of the immoveable property and to get in the outstanding moveable property of in the said plaint named:

Now the condition of this obligation is such, that if the shall duly account for all and every above-bounden the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property, of the said at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the pre-

sence of

Note-If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

APPENDIX G.

APPEAL, REFERENCE AND REVIEW.

No. I.

MEMORANDUM OF APPEAL. (O. 41, r. 1.)

(TITLE.)

The

above-named appeals to the Court at from the decree of in Suit No. of 19 , dated the, day of 19 , and sets forth the following grounds of objection to the decree appealed from, namely:-

No. 2.

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY EXECUTION OF DECREE. (O. 41, r. 5.)

(TITLE.)

To

This security bond on stay of execution of decree executwitnesseth:-

ed by , the plaintiff in Suit No. of That 19 , having sued , the detendant, in this Court and a decree having been passed on the day of 19 , in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the

Court, the said appeal is still pending.

Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the mortgaging the properties specified in extent of Rs. the schedule hereunto annexed; and covenant that if the decree of the first Court be confirmed or varied by the Appellate Court the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him therunder, and if he should fail therein then any amount so payable shall be realised from the proAPP. G]

perties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of

Schedule.

Witnessed by

(Signed.)

I.

2.

No. 3.

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF APPEAL. (O. 41, r. 6.)

(TITLE.)

To

This security bond on stay of execution of decree execut-

ed by witnesseth:—

That , the plaintiff in suit No. of 19, having sued , the defendant, in this Court and a decree having been passed on the day of 19, in favour of the plaintiff, and the defendant having preferred on appeal from the said decree in the Court, the said

appeal is still pending.

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand to the extent of Rs. mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realised from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance.

effect I execute this security bond this of

day

Schedule.

Witnessed by

(Signed.)

I.

2.

No. 4.

SECURITY FOR COSTS OF APPEAL. (O. 41, r. 10.)

(TITLE.)

To

This security bond for costs of appeal executed by witnesseth:—

This appellant has preferred an appeal from the decree of 19, against the respondent, and has in Suit No. been called upon to furnish security. Accordingly I, of my own free-will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant, I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realised from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due I and my legal representatives will be personally liable to pay the To this effect I execute this security bond this balance. 19 day of

Schedule.

(Signed.)

Witnessed by

I.

2.

No. 5.

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL. (O. 41., r. 13.)

(TITLE.)

To

You are hereby directed to take notice that

in the above suit, has preferred an appeal to this Court from the decree passed by you therein on the day of

You are requested to send with all practicable despatch

all material papers in the suit.

Dated the

day of

19

JUDGE.

No. 6.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL. (O. 41, r. 14.)

(TITLE.)

APPEAL from the dated the

of the Court of day of

19 .

To

RESPONDENT.

TAKE notice that an appeal from the decree of in this case has been presented by and registered in this Court, and that the day of 19 has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorised to act for you in this appeal, it will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this day of

19 .

JUDGE.

Norm.—If a stay of execution has been ordered, intimation should be given of the fact on this notice.

No. 7.

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL BUT JOINED BY THE COURT AS A RESPONDENT.

(O. 41, r. 20.)

(TITLE.)

To

WHEREAS you were a party in Suit No. of 19 in the court of , and whereas the

has preferred an appeal to this Court from the decree passed against him in the said suit and it appears to this Court that you are interested in the result of the said appeal:

This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the day of

on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

the property of the state of th

No. 8.

MEMORANDUM OF CROSS OBJECTION. (O. 41, r. 22.)

(TITLE.)

has preferred an appeal to WHEREAS the from the decree Court at the of 19 , dated in Suit No. of , and 19 day of the whereas notice of the day fixed for hearing the appeal was day of ... on the served on the files this memorandum of cross objecrg , the tion under rule 22 of order XI.I of the Code of Civil Procedure, 1977, and sets forth the following grounds of objection to the decree appealed from, namely:-

No. 9.

DECREE IN APPEAL. (O. 41, r. 35.)

(TITLE.)

Appeal No. of the Court of

of 19 dated the from the decree day of

Memorandum of Appeal.

PLAINTIFF.

DEFENDANT.

above-named appeals to the Court The from the decree of in the at day of 19 above suit, dated the for the following reasons, namely:-This appeal coming on for hearing on the day , in the pre-, before of for the appellant and of sence of for the respondent, it is ordered-The costs of this appeal, as detailed below, amounting to . The costs of the , are to be paid by Rs. original suit are to be paid by GIVEN under my hand this day of 19

JUDGE.

COSTS OF APPEAL.

| Appellant. | Amount. | Respondent. | Amount. |
|---|-----------|-----------------------------------|-----------|
| | Ra. a. p. | | Rs. a. p. |
| 1. Stamp for memorandu | m of | Stamp for power Do. for petition | |
| 2. Do for power | ••• | Service of processes | ** |
| 3. Service of processes 4. Pleader's fee on Rs- | | Pleader's fee on Rs. | |
| | | | |

Total

Total

No. 10.

APPLICATION TO APPEAL IN FORMA PAUPERIS. (O. 44, r. 1.)

(TITLE.)

I the above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the moveable and immoveable property belonging to me with the estimated

value thereof.

Dated the

day of

19

(Signed.)

Note—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.

No. II.

NOTICE OF APPEAL IN FORMA PAUPERIS. (O. 44, r. 1.)

Whereas the above-named has applied to be allowed to appeal as a pauper from the decree in the above suit dated the day of

19, and whereas the day of , has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.

GIVEN under my hand and the seal of the Court, this day

of ... 19

JUDGE.

Nos. 12 and 13.

Omitted.

No. 14.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED. (O. 47, r. 4.)

(TITLE.)

To

Take notice that

Court for a review of its decree passed on the day of

Ig , in the above case. The day of

Ig , is fixed for you to show cause why the Court should not grant a review of its decree in this case.

Given under my hand and the seal of the Court, this day of

Ig .

JUDGE.

APPENDIX H.

MISCELLANEOUS.

No. I.

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED. (O. 14, r. 6.)

(TITLE.)

Whereas we, the parties in the above suit, are agreed as to the question of fact (or of law) to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the day of 19 and filed as Exhibit in the said suit, is or is not beyond the statute of limitation (or STATE THE POINT AT ISSUE WHATEVER IT MAY BE):

We therefore severally bind ourselves that, upon the finding of the Court in the negative (or affirmative) of such issue,

will pay to the said

sum of rupees

(OR such sum as the Court shall hold to be due thereon), and I, the said

will accept the said sum of rupees

(or such sum as the Court shall hold to be due) in full satisfac-

[APP. H.

tion of my claim on the bond aforesaid [or that upon such finding I, the said will do or abstain from doing, etc., etc.].

PLAINTIFF. DEFENDANT.

Witnesses-

I.

2.

Dated the

day of

19

No. 2.

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL. (SECTION 24.)

In the Court of the District Judge of No. of 19

To

Whereas an application, dated the day of

19 has been made to this Court by
the in Suit No. of 19 now
pending in the Court of the at , in which
is plaintiff and is defendant, for
the transfer of the suit for trial to the Court of the at

You are hereby informed that the day of 19, has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

No. 3.

NOTICE OF PAYMENT INTO COURT. (O. 24, r. 2.)

(TITLE.)

TAKE notice that the defendant has paid into Court Rs. and says that that sum is sufficient to satis-

APP. H.]

fy the plaintiff's claim in full.

X. Y., PLEADER FOR THE DEFENDANT.

To Z., PLEADER FOR THE PLAINTIFF.

No. 4.

NOTICE TO SHOW CAUSE. (GENERAL FORM.)

(TITLE.)

To

Whereas the above-named
has made application to this Court that
You are hereby warned to appear in this Court in person
or by a pleader duly instructed on the
of
19, at
o'clock in the
forenoon, to show cause against the application, failing wherein,
the said application will be heard and determined ex parte.
GIVEN under my hand and the seal of the Court, this
day of

JUDGE.

No. 5.

LIST OF DOCUMENTS PRODUCED BY PLAINTIFF/DEFENDANT.
(O. 13, r. 1.)

(TITLE.)

No. Description of document.

Date, if any, which the document bears.

Signature of party or pleader.

No. 6.

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION, OF A WITNESS ABOUT TO LEAVE THE JURISDICTION. (O. 18, r. 16.)

(TITLE.)

To

PLAINTIFF (OF DEFENDANT). Whereas in the above suit application has been made to the Court by that the examination of

, a witness required by the said , in the said suit may be taken immediately; and it has been shown to the Court's satisfaction that the said witness is about to leave the Court's jurisdiction (OR ANY OTHER GOOD AND SUFFICIENT CAUSE TO BE STATED):

Take notice that the examination of the said witness

will be taken by the Court on the

day of

Dated the

day of

19

JUDGE.

No. 7.

COMMISSION TO EXAMINE ABSENT WITNESS. (O. 26, rr. 4, 18.)

(TITLE.)

To

is required by the WHEREAS the evidence of in the above suit; and whereas are requested to take the evidence on interrogatories (OR VIVA , and you are hereby ap-VOCE) of such witness pointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.
A sum of Rs. , being your fee in the above, is

herewith forwarded.

GIVEN under my hand and the seal of the Court, this 19 day of JUDGE.

No. 8.

LETTER OF REQUEST. (O. 26, r. 5.)

(TITLE.)

(Heading:-To the President and Judges of, etc., etc., OR AS THE CASE MAY BE.)

WHEREAS a suit is now pending in the in which A. B., is plaintiff and C. D. is defendant; And in the said suit the plaintiff claims

(ABSTRACT OF CLAIM).

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E. F., of G. H., of

and

I. J., of

And it appearing that such witnesses are resident within

the jurisdiction of your honourable Court;

of the said Court, , as the Now I have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (OR VIVA VOCE) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedures and to return the same, together with such request in writing,

if any, for the examination of other witnesses to the said Court.

(Note.—If the request is directed to a Foreign Court, the words "through His Majesty's Secretary of State for Foreign Affairs for transmission" should be inserted after the words "other witnesses" in the last line of this form.)

No. 9.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS. (O. 26, II. 9, II.)

(TITLE.)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for

should be issued; You are hereby appointed

Commissioner for the purpose of

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction, on your application.

A sum of Rs. , being your fee in the above, is

herewith forwarded.

GIVEN under my hand and the seal of the Court, the day of 19. i

JUDGE.

No. 10.

COMMISSION TO MAKE A PARTITION. (O. 26, r. 13.)

(TITLE.)

To

Whereas it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the

Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorised to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

, being your fee in the above, is A sum of Rs.

herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 19

JUDGE.

No. II.

NOTICE TO MINOR DEFENDANT AND GUARDIAN. (O. 32, r. 3.)

(TITLE.)

To

MINOR DEFENDANT NATURAL GUARDIAN.

Whereas an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant; you, the said minor, and you1 are hereby required to take notice that unless within days from the service upon you of this notice, an application is made to this Court for the appointment of you1 or of some friend of you, the minor, to act as guardian for the suit, the Court will pro-. ceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit.

GIVEN under my hand and the seal of the Court, this day of

19

JUDGE.

No. 12.

NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE OF PAUPERISM. (O. 33, r. 6.)

(TITLE.)

To

WHEREAS has applied to this Court for permission to institute a suit against

Here insert the name of guardian.

Code of Civil Procedure, 1977; and whereas the Court sees no reason to reject the application; and whereas the day of , has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof:

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the pauperism of the applicant, you may do so on appearing in this Court on the day of 10.

GIVEN under my hand and the seal of the Court, this

day of 19

JUDGE.

No. 13.

Notice to Surety of his Liability under a Decree. (Section 145.)

(TITLE.)

To

Whereas you did on become liable as surety for the performance of any decree which might be passed against the said defendant in the above suit; and whereas a decree was passed on the day of 19 against the said defendant for the payment of , and whereas application has been made for execution of the said decree against you:

Take notice that you are hereby required on or before day of 19 to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

or arrest,

return.

,ешеИ

Aumber of suit.

Date of presentation of plaint.

Return than payand date of every Minute of other RETURN OF EXECUTION. ment at Arrested. Amount paid into Court. Amount of costs. REGISTER OF CIVIL SUITS. (0. 4, r. 2.) monoy. EXECUTION CIVIL SUITS in the year Hor what and amount If Against whom, Date of order. Date of application. jo APPEABANCE, JUDGMENT, APPEAL. Judgment in appeal, NO. 14. Date of decision of appeal For what, or amount. For whom. Date. REGISTER OF Defendant, COURT of the Plaintiff. Day for parties to appear. acorued, When the cause of action CLAIM. Amount or value. Particulars. DEPENDANT Place of residence. Deseription, Namo. PLAINTIBD. Place of residence. Description.

NOTE. - Where there are numerous plaintiffs or numerous 'defendants,' the name of the first plaintiff only, or the first defendant only, as the egister. oase may be, need be entered in the r

REGISTER OF APPEALS. (0. 41, r. 9.)

| | JUDGMEN | Confirmed, reverse- |
|--------------|---------------|----------------------------|
| | | |
| 19 | | Dete. |
| YEAR | NOE. | Respondent. |
| REES IN THE | AFPEABANGE. | Appellant. |
| | | Day for parties to appear. |
| | ED PROM. | Amount or value. |
| MON | | Particulars. |
| APPEALS FROM | DECREE APPEAL | Mumber of origin- |
| APPI | DE | Of what Court. |
| MO. | .: | Place of residence. |
| REGISTER | RESPONDENT | Description. |
| EGI | RESI | Mame. |
| Щ | ę. | Place of residence |
| | APPELLANT. | Desoription. |
| | AP | Name. |

Mumber of Appeal.

Date of mamorandum.

THE SECOND SCHEDULE.

ARBITRATION.

Arbitration in Suits.

Parties to suit may apthat any matter in difference between them
ply for order of reference. shall be referred to arbitration, they may,
at any time before judgment is pronounced, apply to the Court
for an order of reference.

(2) Every such application shall be in writing and shall

state the matter sought to be referred.

2. The arbitrator shall be appointed in such manner as Appointment of arbit. may be agreed upon between the parties.

3. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this

schedule, deal with such matter in the same suit.

4. (I) Where the reference is to two or more arbitrators,

where reference is to

provision shall be made in the order for a

difference of opinion among the arbitra
provide for difference of tors—

(a) by the appointment of an umpire; or

(b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail; or

(c) by empowering the arbitrators to appoint an um-

pire; or

(d) otherwise as may be agreed between the parties or,

if they cannot agree, as the Court may determine.

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

Power of Court to ap.

5. (I) In any of the following cases, point arbitrator in cor namely:—

(a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or

(b) where an arbitrator or umpire—

(i) dies, or

(ii) refuses or neglects to act or becomes incapable of acting, or

(iii) leaves the State in circumstances showing that he will probably not return at an early date, or

(c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to

do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or

umpire.

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitrator and in such case shall proceed with the suit.

6. Every arbitrator or umpire appointed under para-Powers of arbitrator or graph 4 or paragraph 5 shall have the like umpire appointed under powers as if his name had been inserted in

paragraph 4 or 5. the order of reference.

7. (I) The Court shall issue the same processes to the parties and witness whom the arbitrator or umpire desires to examine, as the Court

may issue in suits tried before it.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

8. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court, may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

9. Where an umpire has been appointed, he may enter on the reference in the place of the

Where umpire may abirtrators,—

(a) if they have allowed the appointed time to expire without making an award, or

(b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

10. Where an award in a suit has been made, the persons who made it shall sign it and cause it Mard to be signed and to be filed in Court, together with any defiled. positions and documents which have been

taken and proved before them; and notice of the filing shall be

given to the parties.

- 11. Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave Statement of special case of the Court, state the award as the whole by arbitrtors or umpire. or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.
- The Court may, by order, modify or correct an Power to modify or cor- award .rect award.
- (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be seprated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting

such decision; or

(c) where the award contains a clerical mistake or an

error arising from an accidental slip or omission.

13. The Court may also make such order as it thinks fit respecting the costs of the arbitration where Order as to cost of arbitration. any question arises respecting such costs and the award contains no sufficient provision concerning them.

The Court may remit the award or any matter referred to arbitration to the reconsideration Where award or matter of the same arbitrator or umpire, upon arbitration may be remitted.

such terms as it thinks fit,-

- (a) where the award has left undertermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;
- (b) where the award is so indefinite as to be incapable of execution;

(c) where an objection to the legality of the award is

apparent upon the face of it.

15. (1) An award remitted under paragraph 14 becomes Grounds for setting and void on failure of the arbitrator or umpire to reconsider it. But no award shall be set

aside except on one of the following grounds, namely:-

(a) corruption or misconduct of the arbitrator or um-

pire;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbit-

ration and in such case shall proceed with the suit.

16. (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitra-Judgment to be accord tion for re-consideration in manner aforeing to award. said, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with,

the award.

Order of reference on agreements to refer.

(1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agree-Application to file in ment, or any of them, may apply to any Court agreement to refer Court having jurisdiction in the matter to to arbitration. which the agreement relates, that the agreement be filed in

Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show

cause, within the time specified in the notice, why the agree-

ment should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

18. Where any party to any agreement to refer to arbit-

Stay of sait where the e is an agreement to refer to arbitration. ration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed?

to be referred, any party to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the Court to stay the suit and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

19. The foregoing provisions, so far as they are consists

tent with any agreement filed under para-Provisions applicable graph 17, shall be applicable to all proto proceedings under the order of reference made

by the Court under that paragraph, and to

the award and to the decree following thereon.

Arbitration without the intervention of a Court.

Filing award in matter referred to arbitration without intervention of a matter person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff

and the other parties as defendants.

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

21. (I) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon, and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is prov-

ed, the Court shall order the award to be filed and shall pro-

ceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

22. Omitted.

23. The forms set forth in the Appendix, with such variations as the circumstances of each case require, shall be issued for the respective purposes therein mentioned.

APPENDIX.

No. I.

APPLICATION FOR AN ORDER OF REFERENCE.

(TITLE OF SUIT.)

I. This suit is instituted for (STATE NATURE OF CLAIM.)

2. The matter in difference between the parties is (STATE

MATTER OF DIFFERENCE).

3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.

4. The applicants therefore apply for an order of refer-

ence.

A. B. C. D.

Dated the

day of

19

Note. If the parties are agreed as to the arbitrators, it should be so

No. 2.

ORDER OF REFERENCE.

(TITLE OF SUIT.)

Upon reading the application presented on the day of it is ordered that the following matter in difference arising in this suit, namely:—

be referred for determination to X and Y, or in case of their not agreeing then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the day of and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

GIVEN under my hand and the seal of the Court, this day of

JUDGE.

No. 3.

ORDER FOR APPOINTMENT OF NEW ARBITRATOR.

(TITLE OF SUIT.)

Whereas by an order, dated the day of [STATE ORDER OF REFERENCE AND DEATH, REFUSAL, ETC., OF ARBITRATOR], it is by consent ordered that Z be appointed in the place of X (deceased or as the case May be) to act as arbitrator with Y, the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before the day of

GIVEN under my hand and the seal of the Court this day of 19.

JUDGE.

No. 4.

SPECIAL CASE.

(TITLE OF SUIT).

In the matter of an arbitration between A. B. of and C.D. of , the following special case is stated

for the opinion of the Court:-

[HERE STATE THE FACTS CONCISELY IN NUMBERED PARA-GRAPHS].

The questions of law for the opinion of the Court are:-First, whether—

Secondly, whether—

Dated the

day of

19

No. 5.

AWARD.

(TITLE OF SUIT.)

In the matter of an arbitration between A. B. of and C. D. of

Whereas in pursuance of an order of reference made by the Court of and dated the day of , the following matter in difference 19 between A. B. and C. D. namely,—

has been referred to us for determination;

Now we, having duly considered the matter referred to us, do hereby make our award as follows:-

We award-

(I) that—

Dated the

day of

19

THE THIRD SCHEDULE.

EXECUTION OF DECREES BY COLLECTORS.

- 1. Where the execution of a decree has been transferred to the Collector under section 68, he may-Powers of Collector
- (a) proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree; or

(b) raise the amount of the decree by letting in per-petuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(c) sell the property ordered to be sold or so much there-

of as may be necessary.

2. Where the execution of a decree, not being a decree

ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of

Procedure of Collector in special cases.

immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

3. (1) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allow-Notice to be given to ing a period of sixty days from the date of dec ee-holders and to its publication for compliance and calling persons having claims on property.

upon-

(a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Col-lector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

(b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

Amount of decrees for payment of money to be ascertained, and immoveable property available for their satisfaction.

4. (1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and ex-

tent of such decrees and claims, and of the judgment-debtor's immoveable property, and may, from time to time, adjourn

such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

The Collector may, instead of himself issuing the notices and holding the inquiry required by Where district Court paragraphs 3 and 4, draw up a statement may issue notices and hold inquiry. specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

6. The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as bet-Effect of decision of ween the parties thereto, have the force of

Cour, as to dispute. and be appealable as a decree.

7. (1) Where the amount to be recovered and the property available have been determined as Scheme for liquidation provided in paragraph 4 or paragraph 5, of decrees for payment of the Collector may,money.

(a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, pro-

ceed to sell such property; or

(b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)-

(i) by letting in perpetuity for a term, on payment of a premium, the whole or any part of the said property; or

(ii) by mortgaging the whole or any part of such pro-

perty; or

(iii) by selling part of such property; or

(iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(v) partly by one of such modes, and partly by an-

other or others of such modes.

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of ts owner.

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistant with this Act as may, from time to time, be made in this behalf by the Government.

Recovery of balance, ment under paragraph 7, the amount to be (if any) after letting or recovered has not been realised, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

- Ocollector to render action counts to Court.

 Collector to render action counts to Court.

 Counts to Court.

 Collector to render action counts to Court.

 Counts to render to time, render to the Court which made the original order for sale an account of all moneys which come to his hands and of all charges incurred duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.
- (2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(3) The balance shall be applied by the Court—

(a) in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

(b) where the Collector has preceded under paragraph I, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or other-

wise as the Court may under section 73 direct; or

(c) where the Collector has proceeded under paragraph

 (i) in keeping down the interest on incumbrances on the property;

(ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistance to such amount as the Court thinks fit; and

(iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other persons as the Court directs.

10. Where the Collector sells any property under this Soles how to be con-schedule, he shall put it up to public auction in one or more lots, as he thinks

fit, and may—

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment neces-

sary for the purpose of obtaining a fair price for the property; (c) buy in the property offered for sale, and re-sell the

same by public auction or private contract, as he thinks fit.

11. (1) So long as the Collector can exercise or perform in respect of the judgment-debtor's immove-Restrictions as to alieable property, or any part thereof, any of nation ly juigmentthe powers or duties conferred or imposed det tor or h's represent . tive, and pro-egution of on him by paragraphs I to Io, the judgremedies by decreement-debtor or his representative in intertoider.

est shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money.

(2) During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph

7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

12. Where the property of which the sale has been ordered is situate in more districts than one,

Provision where prothe powers and duties conferred and imposproperty is in several detricts.

cd on the Collector by paragraphs I to shall be exercised and performed by any one of the Collectors of the said districts as the Government

may by general rule or special order direct.

13. In exercising the powers conferred on him by para-

Powers of Collector to compel attendance and production.

graphs I to Io the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

THE FOURTH SCHEDULE

Omitted.

FIFTH SCHEDULE .. THE

Omitted.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

'NOTIFICATION.

DATED 27TH NOVEMBER 1931.

No. 16. Under orders of His Highness the Maharaja Bahadur (vide Hon'ble Prime Minister's No. 424, dated 16th November 1931) the District Judge of Kashmir has been invested with powers of a Judge of the High Court to pass emergent orders of attachment before judgment under Order 38 rules 5 to 12 of the Code of Civil Procedure, on receiving a plaint, while the High Court is in Session in Jammu.

(Sd.) RAMNATH SHARMA,

REGISTRAR,

High Court of Judicature, Jammu and Kashmir.

THE COMPANIES ACT, 1977. Act No. X of 1977.

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THE COMPANIES ACT, 1977.

Act No. XI of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and letter No. 11529/9 jdl 76, dated 1st November, 920 and State Council Resolution No. 1, dated 8th April, 1925. (Notification 14-L/81)].

An Act to consolidate and amend the law relating to Trading Companies and other Associations.

WHEREAS it is expedient to consolidate and amend the law relating to Trading Companies and other Associations; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

11. Omitted.

2. In this Act unless there is anything repugnant in the subject or context,—

(1) "articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule annexed to this Act:

(2) "company" means a company formed, and registered

under this Act or an existing company:

(3) "the Court" means the Court having jurisdiction under this Act:

(4) "debenture" includes debenture stock:

(5) "director" includes any person occupying the position of a director by whatever name called:

(6) "District Court" means the principal Civil Court of

original jurisdiction in a district:

(7) "existing company" means a company formed and registered under any previous law in force relating to the registration of companies:

(8) "Insurance Company" means a company that carries on the business of insurance either solely or in common with any other business or businesses:

¹ Short title, extent, and commencement are given and regulated by Act IV of 1977,

(9) "manager" includes any person occupying the position of a manager by whatever name called, and whether under a contract of service or not:

(10) "memorandum" means the memorandum of association of a company as originally framed or as altered in

pursuance of the provisions of this Act.

(11) "officer" includes any director, manager or secretary but, save in sections 235, 236, and 237, does not include an auditor:

(12) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and as respects the other provisions of this Act prescribed by His Highness:

(13) "private company" means a company which

(i) by its articles—

(a) restricts the right to transfer its shares; and

(b) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company;

and

(ii) continues to observe such restrictions, limitations and prohibitions:

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be considered as a single member:

(14) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company:

(15) "the registrar" means a registrar or assistant registrar performing under this Act the duty of registration

of companies: and (16) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.

3. (1) The Court having jurisdiction under this Act shall

Jurisd'otion of the be the High Court:

Provided that His Highness may, by notification in the Jammu and Kashmir Government Gazette and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect

of all companies having their registered offices in the district.

(2) For the purposes of jurisdiction to wind up companies, expression 'registered office' means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up

(3) Nothing in this section shall invalidate a proceeding

by reason of its being taken in a wrong Court.

PART II.

CONSTITUTION AND INCORPORATION.

4. (1) No comapany, association or partnership consisting of more than ten persons shall be Prohibition of partnerformed for the purpose of carrying on ships exceeding certain the business of banking unless it is renumber.

gistered as a company under this Act.

(2) No company, association or partner-hip consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act.

Memorandum of Association.

5. Any seven or more persons (or, where the company to be formed will be a private company, Mode of forming inany two or more persons) associated for corporated company. any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

(i) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a

company limited by shares); or

(ii) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or

(iii) a company not having any limit on the liability of its members (in this Act termed an unlimited company):

6. In the case of a company limited Memorandum of ccm. pany limited by shares. by shares-

the memorandum shall state—

(i) the name of the company with "Limited" as the last word in its name;

(ii) the province in which the registered office of the company is to be situate:

(iii) the objects of the company;

(iv) that the libility of the members is limited:

(v) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

(2) no subscriber of the memorandum shall take less than one share:

(3) each subscribe shall write opposite to his name the numbers of shares he takes.

7. In the case of a company limited Memorandum of company limited by guaranteetee.

(1) the memorandum shall state—

(i) the name of the company, with "Limited" as the last word in its name;

(ii) the province in which the registered office of the company is to be situate;

(iii) the objects of the company;

(iv) that the liability of the member is limited;

(v) that each member under takes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributries among themselves, such amount as may be required not exceeding a specified amount:

(2) if the company has a share capital—

(i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(ii) no subscriber of the memorandum shall take less than one share;

(iii) each subscriber shall write opposite to his name the number of shares he takas.

Memorandum of unlimited company.

8. In the case of an unlimited company—

the memorandum shall state—
 the name of the company;

(ii) the province in which the registered office of the company is to be situate;

(iii) the objects of the company;

(2) if the company has a share capital-

(i) no subscriber of the memorandum shall take less than one share:

(ii) each subscriber shall write opposite to his name the number of shares he takes.

9. The memorand m shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

10. A company shall not alter the conditions contained Resolution on altration in its memorandum except in the cases of memrandum, and in the mode and to the extent for

which express provision is made in this Act.

Name of company and identical with that by which a company in existence is already registerred, or so nearly resembling that name as to be calculated to deceive, except, where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforcsaid, registered by a name identical with that by which a company in existence is previously registered or so nearly resembling it as to be calculated to deceive, the first mentioned company may, with the

sanction of the registrar, change its name.

(3) A company shall not be registered by a name which contains any of the following words, namely,—"Crown," "Empror," "Empire," "Empress," "Imperial" "King", "Queen" "Royal," "State", "Durbar" or words expressing or implying the sanction, approval or patronage of the Crown or the Government of India or a Local Government of British India, or of His Highness except where the Governor General in Council, or His Highness signifies his consent to the use of such words as part of the name of the company by order in writing under the hand of one of the Secretaries to Government of India, or one of the Min sters of His Highness:

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act.

(4) Any company may, by special resolution and subject

to the approval of His Highness signified in writing, under the hand of one of the Ministers of His Highness, change its name.

(5) Where a company changes its name, the registrar shall enter the new name on the register in place of the name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate, the change of name shall be complete.

(6) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

12. (1) Subject to the provisions of this act. a company may, by special resolution, alter the pro-Alteration of memoranvisions of its memorandum so as to change the place of the registered office from one part of the State to another, or with respect to the objects of the company, so far as may be required to enable it—

(a) to carry on its business more economically or more

efficiently: or

(b) to attain its main purpose by new or improved means; or

(c) to enlarge or change the local area of its operations;

or

(d) to carry on some business which under existing circumstances may conveniently or advantageously be com-bined with the business of the company; or

(e to restrict or abandon any of the objects specified

in the memorandum.

(2) The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition.

(3) Before confirming the alteration, the Court must be

satisfied— (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court,

be affected by the alteration, and (b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court:

Provided that the Court may, in the case of any person

or class, for special reason, dispense with the notice required by this section.

13. The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks Power of Court when fit, and may make such order as to costs confirming alteration.

as it thinks proper.

14. The Court shall, in exercising its discretion under section 12 and 13, have regard to the rights and interests of the members of Exercise of discretion company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the procedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company

may be expended in any such purchase.

15. (1) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall within Procedure on confirmation of the alteration. three months from the date of the order, be filed by the company with the registrar, and he shall register the same, and shall certify the registration under his hand; and the certificate shall he conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

(2) The Court may by order at any time extend the time for the filing of documents with the registrar under this sec-

tion for such period as the Court thinks proper.

16. No such altertion shall have any operation unt l registration thereof has been duly effected in Effect of failure to reaccordance with the provisions of section gister within three months. 15, and if such registration is not effected within three months next after the date of the order of the Court confirming the alteration, or within such further time as may be allowed by the Court in accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall, at expiration of such period of three months or such further time, as the case may be, become absolutely null and void:

Provided that the Court may, on sufficint cause shown, revive the order on application made within a period of one month.

Articles of Association.

17. (1) There may, in the case of company limited by shares, and there shal, in the case of a Registration of articles. company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule.

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which

the company proposes to be registered.

- (4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purposes of enabling the registrar to determine the fees payable on registration.
- 18. In the case of a company limited by shares and registered after the commencement of this Application of Table A. Act, if articles are not registerd, or, if articles are registered in so far as the articles do not exclude or modify the regulations in table A in the First Schedule, those regulations shall, so for as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

 Form and signature of

 19. Articles shall—

Form and signature of

articles.

(a) be printed;

(b) be divided into paragraphs numbered consecutively;

and (c) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

20. Subject to the provisions of this Act to the Alteration of articles by conditions contained in its memorandum, a company may by special resoluspecial resolution. tion alter or add to its ar icles; and any alteration or addition so made shall be as valid as if or ginally contained in the articles, and be subject in like manner to alteration by special resolution.

General Provisions.

memorandum and articles shall, when 21. (1) The registered, bind the company and the Effect of memerandum members thereof to the same extent as if they respectively had been signed by each member and contained a covenant of the part of each member, his heirs, and legal representatives, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from

him to the company.

22. The memorandum and the articles (if any) shall be Registration of memo- filed with the registrar. randum and articles.

23. () On the registration of the memorandum of a company, the registrar shall certify under Effect or registration. his hand that the company is incorporated, and in the case of a limited company that the company is

limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a commonseal, but with such liability on the part of the members to con-tribute to the assets of the company in the event of its being . wound up as is mentioned in this Act.

24. (1) A cerificate of incoporation given by the registrar in respect of any association shall be Conclusiveness of certi-ficate of incorporation. conclu ive evidence that all the requirement of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be

registered and duly registered under this Act.

(2) A declaration by an advocate, or pleader entitled to appear before the High Court who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company, of compliance with all or any of the said requirements shall be filed with the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

25. (1) Every company shall send to every member, at his request, and on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence

to a fine not exceeding ten rupees.

Associations not for Profit.

Power to dispense with "Cimited" in name of charitable and other companies.

Prower to dispense with being formed as a limited company has been or is about to be formed for promoting commerce, art, science '[religion], charity, or any other useful object and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, His Highness may, by licence under the hand of one of his Ministers, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by His Highness under this section may be granted on such conditions and subject to such regulations as His Highness thinks fit, and those conditions and regulations shall be binding on the association, and shall, if His Highness so directs, be inserted in the memorandum and articles, or in

one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name and of publishing its name, and of filing lists of members and directors and managers with the registrar.

(4) A licence under this section may at any time be revoked by His Highness and upon revocation, the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by the section:

Provided that, before a licence is so revoked, His Highness shall give to the association notice in writing of his intention, and shall afford the association an opportunity o submitting

a representation in opposition to the revocation.

Companies limited by Guarantee.

Provision as to companies and not having a share capital and registered by guarantee.

Provision as to companies tered after the commencement o this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profit of the

company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

PART III.

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

28. (1) The shares of other interest of any member in a company shall be moveable property, transferable in manner provided by the articles of the company.

(2) Each share in a company having a share capital shall

be distinguished by its appropriate number.

29. A certificate, under the common seal of the company specifying any shares or stock held by member, shall be prima facie evidence of the title of the member to the shares or stock therein specified.

30. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of

members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

31. (1) Every company shall keep in one or more books a register of its members, and enter there-Register of members.

in the following particulars:-

(i) the names and addresses, and the occupations, if any, of the members, and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its member, and of the amount paid or agreed to be considered as paid on the shares of each member:

(ii) the date at which each person was entered in the register as a member;

(iii) the date at which any person ceased to be a

member.

(2) If a company makes default in complying with the requirements o. this section, it shall be liable to fine not exceeding fifty rupees for every day during which the default continues; and officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(1) Every company having a share capital shall once at least in every year make a list of all per-Annual list of members sons who, on the day of the first or only ordiand summary. nary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of

the incorporation of the company.

(2) The list shall state the names, addresses, and accupations of all the past and present members therein mentioned and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members respectively and the dates of registration of the transfers, and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:-

(a) the amount of the share capital of the company,

and the number of the shares into which it is divided;

(h) the number of shares taken from the commencement of the company up to the date of the return;

(c) the amount called up on each share; (d) the tota amount of calls received;

(e) the total amount of calls unpaid; (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;

(g) the total number of shares forfeited;

(h) the total amount of shares or stocks for which sharewarrants are outstanding at the da e of the return;

(i) the total amount of share-warrants issued and sur-

rendered respectively since the date of the last return;

(4) the number of shares or amount o stock comprised

in each share-warrant;

(1) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are the managers of the company; and

(m) the total amount of debt due from the company in respect of all mortgages and charges which are required to be

registered with the registrar under this Act.

- (3) The above list and summary shall be contained in a separate pa t of the register o members, and shall be completed within seven days after the day of he first only ordinary general meeting in the year, and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the secretary of the company, together with the certificate from such director, managar or secretary that the list and summary state the acts as they stood on the day aforesaid.
- (4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfuly authorises or permits the default shall be liable to the like penalty.

33. No notice of any trust, expressed, implied or constructive, shall be entered on the register, Trusts not to be entered

or be receivable by the Registrar.

34. On the application of the transferor of any share Registration of transfer or interest in a company, the company shall enter in its register of members the at request of transferor. name of the transferee in the same manner and subject to the some conditions as if the application for the entry were made by the transferee.

35. A transfer of the share or other interest of a deceased Transfer by legal re- member of a company made by his legal representative shall, although the legal presentative representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

36. (1) The register of members, commencing from the Inspection of register of date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act shall during business hours (subject to such reasonable restrictions, as the company in general meeting may impose, so, that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act or any part thereof, on payment of six annas for every hundred words or fractional part thereof

required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall be liable to the like penalty, and the Court may by order compel an immediate inspection of the register.

37. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each

year

Power of Court to rectify 38. (1) If-

(a) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members of a company;

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register:

Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure, on the grounds.

mentioned in section 100 of that Code.

39. In the case of a company required by this Act to file Notice to registrar of a list of its members with the registrar, rectification of register. the Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be filed with the registrar.

40. The register of members shall be pima facie evidence of any matters by this Act directed or

Begister to be evidence. authorised to be inserted herein.

41. (1) A company having a share capital may, if so authorised by its articles, cause to be keep branch register in the United Kingdom or British India a branch register of members in this Act called a British register or British

Indian register, as the case may be.

(2) The company shal, within one month from the date of the opening of any British register, or British Indian register, as the case may be, file with the registrar notice of the situation of the office where such register is kept and, in the event of any change in the situation of such office or of its discontinuance, shall within one month from the date of such change or discontinuance, as the case may be, file notice of such change or discontinuance.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default

continues.

42. (1) A British or British Indian register shall be Begulations as to deemed to be part of the company's register. Spristish register. ter of members (in this section called the princ pal regist r).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before cosing the register shall be inserted in

some newspapers circulating in the locality wherein the British

or British Indian register is kept.

(3) The company shall transmit to its registered office in the State a copy of every entry in its British of British Indian register as soon as may be after the entry is made; and shall cause to be kept at such office, duly entered up from time to time, a duplicate of its British or British Indian register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the dup cate register, the shares registered in the British or British Indian register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a British or British Indian register shall during the continuance of that registration,

be registered in any other register.

(5) The company may discontinue to keep any British or British Indian register, and thereupon all entries in that

register shall be transferred to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such regulations as it may think fit respecting the keeping of a British or British Indian register.

43. A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock jucluded in the warrant, in this Act termed a share-warrant.

44. A share-warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred

by delivery of the warrant

Registration of name of articles of the company, be entitled, on bearer of share-warrant. Surrendering it for concellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

46. The bearer of a share-warrant may, if the articles of
Position of bearer of the company so provide, be deemed to be
a member of the company within the

meaning of this Act, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

47. (1) On the issue of a share-warrant the company shall strike out of its register of members the Entries in register when name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register

the following particulars, namely;-

(i) the fact of the issue of the warrant;

(ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number; and

(iii) the date of the issue of the warrant.

(2) If a company makes default in comp'ying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wifully continues or permits the default shall be liable to the like penalty.

48. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars of share. required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender shall be entered as if it were the date at which a

person ceased to be a member.

49. A company, if so authorised by its articles, may do any one or more of the following things, Power of company to namely:arrange for diff rent amounts being paid on shares.

(1) make arrangements on the issue of shares for a difference between the share holders in the amounts and times

of payment of calls on their shares:

(2) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up;

(3) pay divided in proportion to the amount paid up on each share where a larger amount is paid up on some shares

than an others.

50. (1) A company limited by shares, if so authorised by its articles, may a ter the conditions Power of company limit. of its memorandum as follows (that is to ed by shares to alter ite shere capital. say), it may-

(a) increase its share capitale by the issue of new shares of such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital

into shares of larger amount than its exist ng shares;

(c) convert all or any of its paid-up shares into stock and re-convert that stock into paid up share of any denomina-

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its

share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section with respect to sub-division of shares must be exercised by special resolution.

(3) Where any alteration has been made under this section in the memorandum of a company, every copy of the memrandum issued after the date of the alteration shall be

in accordance with the alteration.

(4) If a company makes default in complying with the requirements of sub-section (3), it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within

the meaning of this Act.

to steck, etc.

51. (1) Where a company having a share capital has consolidated and divided its share capital Notice to Begistrar of into shares of larger amount than its consolidation of share capiexisting shares or converted any of its tal, conversion of shares in-

shares into stock, or-converted stock into shares, it shall, within fifteen days of the consolidation and division, conversion or re-conversion, file notice with the registrar of the same, specifying the share consolidated and

divided, or converted, or the stock re-converted.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly

and w'fully authorises or permits the default shall be liable to

the like penalty.

company having a share capital has 52. Where a coverted any of its shares into stock, and Effect of conversion of filed notice of the conversion with the shaps into stock. registrar, all the provisions of the Act which are applicable to hares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the conpany, and the list of members to be filed with regstrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

53. (1) Where a company having a share capital, whether Ncice of increase of its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the rgistrar, in the case of an increase of share capital, within fiteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the ircrease, and in the case of an increase of members within fiteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar sall record the increase.

(2) If a company makes a default in complying with the rquirements of this section, it shall be liab'e to a fine not aceding fifty rupees for every day during which the default ontinues and every officer of the company who knowing ad wilfully authorises or permits the default shall be liable

b the like penalty.

54. (1) A company limited by shares may, by special resolution confirmed by an order of the Reorganization of share Court, modify the conditions contained in apital. its memorandum so as to reorganize its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes:

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section, a certified

copy thereof shall be filed with the registrar within twentyone days after the making of the order or within such further
time as the Court may allow, and the resolution shall not
take effect untill such a copy has been so filed.

Reduction of Share Capital.

55. (1) No company limited by shares shall have power to buy its own shares unless the consequent reduction of capital is effected and

sanctioned in manner hereinafter provided.

(2) Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the oregoing power) may—

(a) extinguish or reduce the liability on any of its

shares in respect of share capital not paid up; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up share capial which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing lability on any of its shares, pay off any paid-up share capital

which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its menorandum by reducing amount of its share capital and of ts shares accordingly.

(3) A special resolution under this section is in this At

called a resolution for reducing share capital.

Application to Court for tion for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

Addition to name of com. resolution for reducing share capital, of pany of "and reduced". where the reduction does not involve either the diminution of any liability in respect of unpaid share capital, or the payment to any shareholder of any paid up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, untill such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company:

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid

share capital or the payment to any share-holder of any paidup share capital, the Court may, if it thinks expedient, dispense altogether with the addittion of the words "and reduced".

Objection by creditors, involves either diminution of liabilty in respect of unpaid share capital, or the payment to any share-lolder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at he date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as for as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days, within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting the

reduction.

Power to dispense with consent of creditor on determined does not consent to the reduction, the Court may if it thinks fit, dispense with the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount (that is to say),—

(i) if the company admits the full amount of his debt or claim, or though not admitting it, is willing to provide for it,

then the full amount of debt or claim;

(ii) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

61. (1) The registrar on production to him of an order

of the Court confirming the reduction of Registration of order and minute of reduction. the share capital of a company, and on the filing with him of a certified copy of the order and of a minute (approved by the Court) showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered

shall take effeet.

(3) Notice of the registration shall be published in such

manner as the Court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

62. (1) The minute when registered shall be deemed to be substituted for the corresponding part Minute to form part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein, and shall be embodied in every copy of the

memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every office of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

63. (1) A member of the company, past or present, shall Liability of members in not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or respect of reduced shares. (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount

of the share as fixed by the minute. Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount

of his debt or claim, then-

(i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of the debt, or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be would up on the day before that registration; and

(ii) if the company is wound up, the Court on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they

were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the

contributories among themselves.

Penalty on concealment name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonment which may extend to one year or with fine, or with both.

Publication of reasons require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit the causes which led

to the reduction.

after the commencement of this Act may, if it has a share capital and is so authorised and reduction of a company limited by guarantee having a share capital in the same manner and subject to which a company limited by shares may increase or reduce its duce its share capital under the provisions of this Act.

Registration of Unlimited Company as Limited.

67. (1) Subject to the provisions of this section, any Registration of unlimic company registered as unlimited may reted company as limited. gister under this Act as limited, or any

company already registered as a limited company may reregister under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of, the company before the registration, and those debts, liabilities, obligations and contracts may be en orced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section, the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of company; but save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were first registration of the company under this Act.

68 An unlimited company having a share capital may,

Power of unlimited company to provide for reserve share capital on re-registration. by its resolution for registration as a limited company in persuance of this Act do either or both of the following things, namely:—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called up except in the event and for the purposes of the company being wound up;

(b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

Reserve liability of limi determine that any portion of its share ted company. capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and there upon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Unlimited Liability of Directors.

70. (1) In a limited company the liability of the directors

Limited con pany may have Directors with un- the memorandum, be unlimited.

Imi ted limbility.

(2) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the person holding that office will be unlimited and the promoters and officers of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director or proposer makes default in adding such a statement, or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

71. (1) A limited company, if so authorised by its

71. (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of directors the liability of its directors or of any unlimited.

(2) Upon the confirmation of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum, and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

- 72. (1) Every company shall have a registered office to which all communications and notices may be addressed.
 - (2) Notice in writing of the situation of the registered

office, and of any change therein, shall be filed with the re-

gistrar, who shall record the some.

(3) If a compay carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.

73. Every limited company—

Publicatin of name by a limited company.

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible and in English and Urdu characters;

(b) shall have its name engraven in legible characters on

its seal;

(c) shall have its name mentioned in legible English and Urdu characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

74. (1) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every officer of the company who knowingly and willfully authorises

or permits the default shall be liable to the like penalty.

(2) If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any bill-head, letter paper, notice, advertisement or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company wherin its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Publication of authorised as well as subscribed ment of the amount of the authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid up.

(2) Any compony which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable

to a fine not exceeding one thousand rupees.

Meetings and Proceedings.

76. (1) A general meeting of every company shall be held once at the least in every year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held the company and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundered supees.

(2) When detault has been made in holding a meeting of the company in accordance with the provisions of this section, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of

the company.

8tatutory meetings of after the commencement of this Act shall within a period of six months from the date at which the company is entitled to commence business, hold a general meetings of the members of the company, which shall be called the statutory meeting.

(2) The directors shall, at least ten days before the day on which the meeting is held, forward a report (in this Act called "the statutory report.") to every member of the company and to every other person entitled under this Act to

receive it.

(3) The statutory report shall be certified by not less than two directors of the company or, where there are less than two directors, by the sole director and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration fo which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(c) an abstract of the receipts of the company whether from its share capital or from debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipt of the company from shares and debentures and other sources, the payments made there out and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company;

(d) the names, addresses and descriptions of the directors, auditors (if any), managers (if any) and secretary of the

company;

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, to gether with the particulars of the modification or propo ed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar forthwith, after the sending thereof to the

members of the company

(6) Every director of the company who knowingly and wilfully authorises or permits a default in complying with the provisions of sub-section (2) or sub-section (5) shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(7) The directors shall cause a list showing the names, descriptions and addresses of the members of the company and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company

during the continuance of the meeting.

(8) The members of the company present at the meeting shall be at liberty to discuss any matters relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

9 The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original

meeting.

(10) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(11) The provisions of this section as to the and filing to the statutory report shall not apply in the case

of a private company

78. (1) Notwithstanding anything in the articles, the directors of a company which has a share Oalling of extraordinary general meeting on requicapital shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisi-

tionists.

(3) If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three

months from the date of the deposit of the requisition.

(4) If at any such meeting a resolution requiring confirmat on at another meeting is passed, the directors shall forthwith call a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution and, if the directors do not call the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves call the meeting.

(5) Any meeting called under this section by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by

directors.

79. In default of, and subject to, any Provisions as to meetings regulations in the articles,and votes.

(i) a mee ing of a company may be called by fourteen

days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the First Schedule;

(ii) five members may call a meeting;

(iii) any person elected by the members present at a meeting may be chairman thereof; and

(iv) every member shall have one vote.

Representation of companies at meetings of other authorise any of its officials or any other person to act as its representative at any

meeting of that other company and the person so authorised shal be entitled to exercise the same powers on behalf of the company which he represents as if he

were an individual shareholder of that other company.

Extraordinary and when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it

has been-

(a) passed in manner required for the passing of an

extraordinary resolution; and

(b) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman on a show of hands that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a poll may be demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons not in any case exceeding five, as may be specified in the articles.

(5) In a case where, if a poll is demanded, it may in accordance with the articles be taken in uch manner as the chairman may direct, it may, if the chairman so directs, be taken at the meeting at which it is demanded.

(6) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is

entitled by the articles of the company.

(7) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

82. (1) A copy of every special and extraordinary resolution shall, within fifteen days, from the conof special and extraordishall, within fifteen days, from the confirmation of the special resolution or from the passing of the extraordinary resolution nary resolutions. as the case may be, be printed or typewritten and filed with the registrar who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the

date of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member, at his request, on payment of one rupee or such less sum as the company may direct.

(4) If a company makes default in so filing with the registrar a copy of a special or extraordinary resolution, it shall be liable to a fine not exceeding twenty rupees for every

day during which the detault continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member, when required by this section, a copy of a special resolution, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(6) Every officer of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the com-

pany for that default.

83. (1) Every company shall cause minutes of all proceedings of general meeting and of its Mrnutes of proceedings directors to be entered in books kept for of meetings and Director. that purpuse.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, hall be

evidence of the proceedings.

(3) Until the contrary is proved every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

83-A. (1) Every company registered after the commencement of this Act shall have at least two

Directors obligatory. directors.

(2) The section shall not apply to a private company.

S3-B. In default of and subject to any regulations in the articles of a company other than a private company—

(i) the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors

shall have been appointed;

(ii) the directors of the company shall be appointed

by the members in general meeting;

may be filled up by the directors, but the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director.

84. (1) A person shall not be capable of being appointed

Restrictions on appoints shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the com-

pany or in relation to any intended company or in any statement in lieu of prespectus filed by or on behalf of a company, unless before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus as the case may be, he has, by himself or by his agent authorised in writing—

(i) signed and filed with the registrar a consent in

writing to act as such director, and

(ii) save in the case of a company limited by guarantee and not having a share capital, either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2) On the application for registration of the memorandum and articles of a company the applicant shall file

with the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding five hundred rupees.

(3) This section shall not apply to a private company nor to prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is

entitled to commence business.

85. (1) Without prejudice to the restrictions imposed by section 84, it shall be the duty of every director who is by the articles required Qualification of director. to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the artic'es.

(2) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3) If, after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a

director.

86. The acts of a director shall be valid notwithstanding Validity of acts of direc. any defect that may afterwards be discovered in his appointment or qualificators. tion: Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid.

87. (1) Every company shall keep at its registered office a register containing the names and ad-List of directors to be dresses and the occupations of directors, sent to registrar. and file with the registrar a copy thereof, and from time to time file with the registrar notice of any change among its

directors or managers.

(2) If default is made complying with this section; the company shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer-of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Contract .

- 88. (1) Contracts on behalf of a company may be made as follows (that is to say):—
- (i) any contrac which, if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the some manner be varied or discharged;

(ii) any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be

varied or discharged.

(2) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, or legal

representatives, as the case may be.

89. A bill of exchange, hundi or promissory note shall Bills of exchange and be deemed to have been made, drawn, psomissory notes. accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority, express or implied.

Execution of deeds empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the State; and every deed signed by such attorney on behalf of the company, and under his seal, where sealing is required, shall bind the company, and have the same effect as if it were under its common seal.

the transaction of business beyond the limits of the State, may, if authorised by its articles, have for use in any terriabroad.

State, an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appoint-

ed for the purpose in any territory, district or place not situate in the State to affix the same to any deed or other document to which the company is party in that territory,

district or place. (3) The authority of any such agent shall, as between the company and any person dealing with the agent continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing

the same. (5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed

with the common seal of the company.

91-A. (1) Every director who is directly or indirectly concerned or interested in any contract or arrangemet entered into by or on behalf D'sclosure of interest of the company shall disclose the nature by director. of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement:

Provided that a general notice that a director is a member of any specified firm or company and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regard any such transaction be sufficient disclosure within the meaning of this sub-section, and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such

firm or company.

(2) Every director who cotravenes the provisions of subsection (1) shall be liable to a fine not exceeding one thousand rupees.

91-B. No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or in-Prohibition of voting by interested director. terested; and if he does so vote, his vote shall not be counted:

Provided that the directors or any of them may vote on any contract of indemenity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.

(2) Every director who contravenes the provisions of subsection (1) shall be liable to a fine not exceeding one thousand rupees.

1 (3) This section shall not apply to a private com-

pany].

91-C. (1) Where a compay enters into a contract for the appointment of a manager of the case of contract appoint. company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such

existing contract, the company shall send an abstract of the terms of such contract or variation, as the case may be together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member; and the contract shall be open to the inspection of any member at the registered office of the company.

(2) If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine not exceeding one thousand rupees; and every officer of the company who knowingly and wilfully authorises or permits

the default shall be liable to the like penalty.

Ontracts by agents of company in which company is undisclosed principal.

Ontracts by agents of company in which company is undisclosed principal.

It is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it has been made.

(2) Every such manager or other agent shall, forthwith deliver the memorandum aforesaid to the company, and such memorandum shall be filed in the office of the company and

laid before the directors at the next directors' meeting.

(3) If any such manager or other agent makes default in complying with the requirements of this section:

(a) the contract shall, at the option of the company,

be void as against the company; and

(b) such manager or other agent shall be liable to a fine not exceeding two hundred rupees.

Prospectus.

92. (1) Every prospectus issued by or on behalf of a

1Section 91-B (3) added by Act 5 of 1988 published in Government Gasette dated 18th Har 1988.

company or in relation to any intended company shall be dated and that date shall. Filing of propectus. unless the contrary be proved, be taken as the date of publica-

tion of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing. shal be filed for registration with the registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required

by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is is ued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liab'e to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so filed.

93. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person Specific requirements as who is or has been engaged or interested to particulars of prosin the formation of the company, shall pectus.

state—

(a) the contents of the memorandum, with the names, descriptions and addresses of the signatories and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares (if any) and nature and extent of the interest of the holders in the property and profits of the company; and

(b) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the

articles as to the remuneration of the directors; and

(c) the names, descriptions and addresses of the directors or proposed directors and of the managers or proposed

managers (if any); and

(d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount (if any) paid on the shares so allotted; and

(e) the number and amount of shares and debentures

which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued: and

(f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures to the vendor, and where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors; and

(1) the amount (if any) paid or payable as purchasemoney in cash, shares or debentures for any such property as aforesaid, specifying the amount (if any) payable for goodwill;

and

(h) the amount (if any) paid within the two preceding years or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and

(i) the amount or estimated amount of preliminary

expenses; and

(k) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration

for any such payment; and

(1) the dates of and parties to, every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or to any contract entered into more than two years before the date of issue of the prospectus; and

(m) the names and addresses of the auditors (if any)

of the company; and (n) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in

the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and

(o) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares res

pectively.

(2) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement it shall not be necessary in the advertisement to specify the contents of the memorandum, or the signatories thereto, and the number of shares subscribed for by them.

(3) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of

other persons.

- (4) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors, or proposed directors, and of managers or proposed managers, and the amount or estimated amount of preliminary expenses shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.
- (5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.
- Meaning of "vepdor" deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) the purchase-money is not fully paid at the date of

issue of the prospectus; or

(b) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(c) the contract Idepends for its validity or fulfilment

on the result of that issue

95. Where any of the property to be acquired by the company is to be taken on lease, section 93 Application of section 93 shall apply as if the expression 'vendor" to the case of property taken on lease. included the lessor, and the expression. " purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

Any conditions requiring or binding any applicant for shares or debentures to waive com-Invalidity of certain conpliance with any requirements of section 93, ditions as to waiver or or purporting to effect him with notice of notice. any contract, document or matter not specifically referred to in the prospectus, shall be void.

97. In the event of non-compliance with any of the requirements of section 93, a director or Saving in certain cases other person responsible for the prospectus of non-compliance with shall not incur any liability by reason of section 93. the non-compliance, if he proves that-

(a) as regards any matter not disclosed, he was not

cognisant thereof; or

(b) the non-compliance arose from an honest mistake of

fact on his part:

Provided that, in the event of non-compliance with the requirments contained in clause (n) of sub-section (I) of section 93, no such director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

98. (1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless Obligations of companies where no prospectus is before the first allotment of either shares or debentures there has been filed with the registrar a issued. statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Second Schedule.

(2) This section shall not apply to a private company or to a company which has allotted any shares or debenture before the commencement of this Act or, in so far as it relates to the allotment of shares, to a company limited by guarantee

and not having a share capital.

99. A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except Restriction on alteration subject to the approval of the company in of terms mentioned in general meeting.

prospectus or statement in lieu of prospectus.

100. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company every person who is a director of the company at the time of the issue of he prospectus, and every person who has authorised the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein, or issued therewith, unless it is proved—

(a) with respect to every misleading or untrue statement not purporting to the made on the authority of an expert or of a public official document or statement that he had reasonable ground to believe and did, up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement fairly represented the facts or

was true;

(b) with respect every to misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation: Provided that the director, person named as director, promoter or person who authorised the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to belive that the person making the statement, report or valuation was competent to make it; and

(c) with respect to every misleading or untrue statement purporting to be a statement made by an official persons or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the

document:

or unless it is proved—

(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(ii) that the prospectus was issued without his know-ledge or consent, and that on becoming aware of its issue, he

forthwith gave a reasonable public notice that it was issued

without his knowledge or consent; or

(iii) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal and of the reasons therefor.

(2) Where a company existing at the commencement of this Act has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of company, or as having agreed to become a director thereof, and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus, and has not authorised or consulted to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or in defending himself against any suit or legal proceedings brought against him in respect thereof.

(4) Every person who by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of

fraudulent misrepresentation.

(5) For the purposes of this section—

(a) the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or the portion thereof containing the misleading or untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;

(b) the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives autho-

rity to a statement made by him.

Ailotment.

101. (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with namely:—

(a) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment, or

(b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscriptions, has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received in cash by the company.

(2) The amount so fixed and named, and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to

as the minimum sub cription.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) if the conditions aforesaid have not been complied with on the expiration of one hundred and twenty days after the first issue of prospectus, all money received from applicants for shares shall be forthwith repaid to the without interest, and, if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the Directors of the company shall be jointly and severally liable to repay that money with interest at the rate of seven per cent. per annum from the expiration of the one hundred and thirtieth day:

Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or

negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirements of this section shall be void.

(6) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allot-

ment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is tosay),—

(a) the amount (if any) fixed by the memorandum or

articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may

proceed to allotment; or

(b) if no amount is so fixed and named, the whole amount of the shares capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash; has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

(8) Sub-section (7) shall not aply to a private company or to a company which has allotted any shares or debentures

before the commencement of this Act.

102. (1) An allotment made by a company to an applicant of irregular in contravention of the provisions of section ror shall be voidable at the instance of allotment. the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course

of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 101 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment

103. (1) A company shall not commence any business or exercise any borrowing powers unless-Restrictions on com-

mencement of business.

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not

less in the whole than the minimum subscription; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe or its shares, on the shares payable in cash;

(c) there has been filed with the registrar a duly verified and declarartion by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been

complied with; and

(d) in the case of a company which does not issue a prospectus inviting the public to subscribe for shares, there has been filed with the registrar a statement in lieu of prospectus.

(2) The registrar shall, on the filing of a duly verified declaration, in accordence with the provisions of this section, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence

that the company is so entitled:

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its share, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional on y, and shall not be binding on the company until

that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall without prejudice to any other liability, be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(6 Nothing in this section shall apply to a private company, or to a company registered before the commencement of this Act, which does not issue a prospectus inviting the bublic to subscribe for its shares or, in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

104 (1) Whenever a company having a share capital Beturn as to allotment. makes any allotment of its shares, the company shall, within one month there-

after,—

(a file with the registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the name, addresses and descriptions of the allottees and the amount (if any) paid or due and payble on each share: and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the registrar a contract in writting constituting the title of the aliottee to the allotment together

with any contract of the sale, or for services or other consideration in respect of which that allotment was made such contracts being duly stamped, and file with the registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above-mentioned is not reduced to writing, the company, shall, within one month after the abotnent, file with the registrar the prescribed particulars of the contract, stamped with the same stampduty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Stamp Act and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(3) It default is made in complying with the requirements of this section, every officer or the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which

the default continues:

Provided that in case of default in filing with the registrar within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the commission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Court may think proper.

Commissions and Discounts.

(1) It shall be awful for a company to pay a com-105. mission to any person in consideration of Power to pay certain his subscribing or agreeing to subscribe, commissions and prohibition of payment of all whether ab_olutely or conditionally, for other commissions, disany shares in the company, or procuring counts etc. or agreeing to procule subscriptions, whether absolute or . conditional, for any snares in the company if the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent. of the commission paid or agreed to be paid is,-(a) in the case of snares offered to the public for subscription, disclosed in the prospectus; or

(b) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar and where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in

that circular or no ice.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring, or agreeing to procure, subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase-money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any

company to pay such brokerage as it has heletolore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from a company shall have, and shall be deemed always to have had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been

legal under this section.

106. Where a company has paid any sums by way of commission in respect of any shares or Statement in balance debentures, or allowed any sums by way sheet as to commissions and discounts. of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balancesheet of the company until the whole amount thereof has been written off.

Payment of Interest out of Capital.

107. Where any shares of a company are issued for the purpose of raising money to derray the Power of company to expenses of the construction of any works pay interest out of capital in certain cases. or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the condition and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that-

(1) no such payment shall be made unless the same is

authorised by the articles or by special resolution;

(2) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of His Highness, which sanction shall be conclusive evidence, for the purposes of this section, that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section;

(3) before sanctioning any such payment, His Highness may, at the expense of the company, appoint a person to inquire and report to His Highness as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the

inquiry;

(4) the payment shall be made only for such period as may be determined by His Highness; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided;

(5) the rate of interest shall in no case exceed four per cent. per annum or such lower rate as His Highness may, by

notification in the Gazette, prescribe;

(6) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of

which it is paid;

(7) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

Certificates of Shares, etc.

108. (1) Every company shall, within three months after Limitation of time for the allotment of any of its shares, debentures or dehenture stock, and within three issue of certificates. months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the cert.ficates of al. debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every officer of the company who is knowing'y a party to the default, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Information as to Mortgages, Charges, etc.

109. Every mortgage or charge created after the com-Oert in mortgages and mencement of this Act by a company and being either—
registered.

(a) a mortgage or charge for the purpose of securing any issue of debentures; or

(h) a mortgage or charge on uncalled share capital of

the company; or

(c) a mortgage or charge on any immoveable property wherever situate, or any interest therein; or

(1) a mortgage or charge on any book debts of the

company; or

- (e) a floating charge on the undertaking or property
- shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner, or filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable:

Provided that,-

(i) in the case of a mortgage or charge created out of the State, comprising, solely property situate outside the State, twenty-one days after the date on which the instrument or copy could, in the course of post, and if despatched with due diligence, have been received in the State shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, or the time within which the particulars and instrument or copy are to be filed with the registrar; and

(ii) where the mortgage or charge is created in the

State but comprises property outside the State, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner, may be filed for registration, notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and

(iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a mortgage or charge on those book

debts; and

(iv) the holding of debentures entitling the holder to a charge on immoveable property shall not be deemed to be an

interest in immoveable property.

110. Where a series of debentures containing, or giving by reference to any other instrument, Particulars in case of any charge to the benefit of which the series of debentures entitling holders pari passu. debenture-holders of that series are entitled pari passu is created by a company, it shall be sufficient for the purposes of section 109 it there are filed with the registrar within twenty-one days after the execution of the deed, conutaining the charge or, if there is no such deed, after the exection of any debentures of the series, the following particulars:-

(a) the total amount secured by the whole series and

(h) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined; and

(c) a general description of the property charged; and (d) the names of the trustees (if any) for the debenture-

holders; together with the deed or a copy thereof verified in the prescribed manner containing the charge, or if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register:

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the

validity of the debentures issued.

111. Where any commission, allowance or discount has heen paid or made either directly or indirectly by the company to any person in Particulars in case of consideration of his subscribing or agreeing commission, etc., on debentures.

to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscrittions whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 109 and 110 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but an ommission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security or any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a dis-

count.

(1) The registrar sha'l keep, with respect to each 112. company, a register in the prescribed form of all the mortgages and charges created Register of mortgages by the company after the commencement and charges. of this Act and requiring registration under section 109, and shall, on payment of the prescribed fee, enter in the register, wi h respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or person entitl'd to the charge.

(2) After making the entry required by sub-section (1), registrar shall return the instrument (if any) or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 109 or section 110, to the person.

filing the same.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the pres-

cribed fee, not exceeding one rupee for each inspection.

113. The registrar shall keep a chronological index, in Index to register of the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

114. The registrar shall give a certificate under his hand of the registration of any mortgage or Certificate of registration. charge registered in persuance of section shall be conclusive evidence that the requirements of section 109 to 112 as to registration have been complied with.

115. The company shall cause a copy of every certificate

Endorsereent of certificate of registration ra dohenture or certificate of debentures stook.

of registration, given under section 114, to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment

of which is secured by the mortgage or charge so registered:

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debentures or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

- Duty of company and the registrar, for registration, the presright of interested party of cribed particulars of every mortgage or
 charge created by the company and of
 the issues of debentures of a series requiring registration under
 section 109, but registration of any such mortgage or charge
 may be effected on the application of any person interested
 therein.
- (2) Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.
- The copy of instrument oreating mortgage or charge requiring mortgage or quiring registration under section 109, to be hept at the registered office of the company: Provided that, in the case of a series of uniform debenture, a copy of one such debenture shall be sufficient.
- 118. (1) If any person obtains an order for the appointment of a receiver of the property of a Registration of appoint company, or appoints such a receiver under any powers contained in any instrument, he shall, within fifteen days from the date of order or of the appointment under the powers contained in the instrument file notice of the fact with the registrar, and the Registrar shall, on payment of prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

119. (1) Every receiver of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall once in every half-year while he remains in possession, and also on ceasing to act as receiver, file with the registrar an abstract, in the prescribed form, fo

his receipts and payments during the period to which the abstract relates and shall also, on ceasing to act as receiver, file with the registrar notice to that effect, and the registrar shall enter the n tice in the register of mor gages and charges.

(2) Every receiver who makes default in complying with the provisions of this section shall be liable to a fine not ex-

creding five hundred rupees.

120. The Court, on being satisfied that the omission to register a mortgage or charge within the Rectification of register time required by section 109, or that the of mortgages. omission or misstatment of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or share-holders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified, and may make such order as to the costs of the application as it thinks fit.

121. The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, fu nish the

company with a copy thereof

122. (1) If any company makes default in filing with the registrar for registration the particulars—

(a) of any mortgage or charge created by the company

or;

(b) of the issues of debentures of a series, requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is knowingly a party to the defualt, shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(2) Subject as aforestid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mo tgage or charge created by the company, the company, and every officer of the company who knowingly and wilfully authorises or permits

the default shall, without the prejudice to any other liability be liable on conviction to a fine not exceeding one thousand

rupees.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or ce tificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

123. (1) Every limited company shall keep a register of

mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of security to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

124. (1) The copies kept at the registered office of the

Right to in pect copies of instrument creating mortgages and charges, and company's register of mortg.ges.

company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the registrar, and the register of mortgages kept in pursuance of section 123

shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

the company shall be liable to a fine not exceeding fifty rupees and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and in addition to the above penalty, the Court may by order compel an immediate inspection of the copies or register.

125. (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may

be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(2) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust-deed of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incure the like penalty, and the Court may by order compel an immediate inspection of the register.

Debentures and Floating Charges.

deed for securing any debentures, whether issued or executed before or after the passing of this Act shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

127. (1) Where either before or after the commencement

of this Act a company has redeemed any debentures in cordespond debentures in cordespond debentures in cordespond debentures in cordespond debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power, the company shall have power, and shall be deemed always to have had power, to re-issue the

debentures, either by re-issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue, they have either before or after the commencement of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed

(3) Where a company has, either before or after the commencement of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by a company, whether the re-issue or issue was made, before or after the commencement of this Act shall be treated as the issue of a new debenture for the purposes of stamp-duty, but t shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section, which appear to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof, unless he had notice or, but for his negligence might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty,

(5) Nothing in this section shall prejudice—

(a the operation of any decree or order of a Court of competent jurisdiction pronounced or made on or before the date of coming into force of this Act as between the parties to the proceedings in which the decree or order was made, and any appeal from any such decree or order shall be decided as if this Act had not been passed : or

(b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

128. A contract with a company to take up and pay

Specific performance of contract to subscribe for debentures.

for any debentures of the company may entorced by a decree for specific performance.

Payments of certain debts out of ansats abject to floating charge in priority to claims under the ch.rge.

129. (1) Where either a receiver is appointed on behalf of the hoders of any debentures of a company secured by a floating charge, or possession s taken by or on behalf of these debenture holders of any property comprised in or subject to the charge,

then if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be pad in priority to all other debts, shall be paid forthwith out of any ass ts coming to the hands of the receiver or other person taking posses ion as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as

the case may be.

(3) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Statements, Books and Accounts.

130. Every company shall keep proper books of account in which shall be entered full, true and Company to keep proper complete accounts of the affairs and books of account. transactions of the company.

131. (1) Every company shall, once at least in every year and at intervals of not more than Annual balance-sheet. fifteen months, cause the accounts of the company to be balanced and a balance-sheet to be prepared.

(2) The balance sheet shall be audited by the auditor of the company as hereinafter provided, and the auditor's report shall be attached thereto, or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(3) Every company other han a private company shall send a copy of such balance-sheet so audited to the registered address of every membe of the company at least seven days before the meeting at which it is to be lad before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the

membe's of the company during a period of at least seven

days before that meeting.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine no exceeding one thousand rupees, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

132. (1) The balance-sheet shall con ain a summary of the property and asse s and of the capital Contents of balance-sheet. and liabilities of the company giving such particulars as will disclose the general nature of hose l'abilities and assets and how the value of the fixed as ets has been arrived at.

(?) The balance-sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances

admit.

133. (1) Save as provided by sub-section (2) the balancesheet shall,-Authentication of balance sheet.

(1) in the case of a banking company, be signed by the manager (if any) and, where there are more than three directors of the company by at least three of those directors and, where there a e not more than three directors, by all the directors;

(ii) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole director and by the manager if any, of the company.

(2) When the total number of directors of the company for the time being in the State is less than the number of directors whose s gnatures are required by sub-section (1), then the balance-sheet shall be signed by all the directors for the time being in the State, or, if there is only one director for the time being in State, by such director, but in such a case the e shal be subjoined to the balance-sheet a state nent signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section (1).

(3) If any copy of a balance-sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is knowingly a party to the default shall be punishable with

fine which may extend to five hundred rupees.

134. (I) After the balance-sheet has been laid before the company at the general meeting, a copy thereo, signed by the manager or Copy of balance-sheet secretary of the company shall be filed and auditor's report to be forwarded to the registrar. with the registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the

requirements of section 32.

is laid does not adopt the balance sheet, a tatement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to he copy thereof required to be filed with the regis rar.

(3) This sec ion shall not apply to a private company.

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty as is provided by ection 32 for a default in complying with the provisions of that section.

135. Save as otherwise provided in this Act, any mem-

company to copies of the balance-sheet and the auditor's report.

furnished with copies of the balance-sheet and the auditor's report at a charge not exceeding six annas for every hundred

words or fractional part thereof.

Statement to be publi hed by Banking and certain other Companies.

Certain companies to pany or an insurance company or a depopublish statement in scheaule.

The publish statement in scheaule.

Third Schedule, or as near thereto as circumstances will admit.

(2) A copy of the statement shall be displayed and, until the disp ay of the next following statemen, kept displayed in a conspicuous place in the registe ed office of the company, and in every branch office or place where the business of the

company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement on payment

or a sum not exceeding eight annas

(4) If a company makes de ault in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and will ully authorises or permits the default shall be hable to the like penalt.

Investigation by the Registrar.

- 137. (1) Where the registrar, on perusal of any document which a company is required to sub-Power of registrar to m t to him under the provisions of this call for information or ex-Act, is of opinion that any information or planation. explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order
- (2) On the receipt of an order under sub-section (1), it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

(3) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine

not exceeding fifty rupees in respect of each offence.

(4) On receipt of such information or explanation the registrar may annex the same to the origina' document submitted to him; and any additional document so annexed by the registrar shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject.

(5) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the registrar is of opinion that the document in question d scloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the registrar shall report in writing the circumstances of the case to His Highness.

Inspection and Audit.

138. His Highness may appoint one or more competent inspectors to investigate the affairs of Investigatin of affairs inspectors to investigate the affairs of of company by inspectors. any company and to report thereon in such manner as His Highness may direct,-

(i) in the case of a banking company having a share capital, on the application of members holding not less than

fifth of the shares issued;

(ii) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

(iii) in the case of a company not having a share capital on the application of not less than one-fifth in number of the persons on the company's register of members;

(iv) in the case of any company, on a report by the

registrar under section 137, sub-section (5).

Application for inspection to be supported by such evidence.

Application for inspection to be supported by such evidence.

His Highness may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation; and His Highness may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

140. (1) It shall be the duty of all persons who are or Inspection of books and have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

(2) An inspector may examine on oath any such person in relation to its business, and may administer an oath

accordingly.

(3) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question re ating to the affairs of the company he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

Results of examination inspectors shall report their opinion to how dealt with. His Highness, and a copy of the report shall be forwarded by His Highness to the registered office of the company, and a further copy shall, at the request of the applicants for the invest gation, be delivered to them.

(2) The report shall be written or printed, as His

Highness directs.

(3) All expenses of, and incidental to, the investigation shall to defrayed by the applicants unless His Highness directs the same to be paid by the company, which His Highness is hereby authorised to do.

142. (1) A company may by special resolution appoint

Power of company to inspectors to investigate its affairs.

appoint inspectors.

(2) inspectors so appointed shall have the same powers and duties as inspectors appointed by His Highness, except that, instead of reporting to His Highness, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) All persons who are or have been officers of the com-

pany shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by His Highness.

Report of inspectors under this Act, au nenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Qualification and ap- tor of any company other than a private company unless he holds a certificate from His Highness entitling him to act as an auditor of com-

panies.

'[(2) His Highness the Maharaja Bahadur may by notification in the Jammu and Kashmir Government Gazette and after previous publication make rules providing for the grant, renewal or cancellation of such certificates and prescribing conditions and restrictions for such grant, renewal or cancellation:

Provided that nothing contained in such rules shall preclude any person from being granted a certificate merely by reason that he does not practise as a public accountant.

(2-A). In particular, and without prejudice to the generali-

ty of the foregoing power, such rules may

(a) provide for the maintenance of a registrar of accountants entitled to apply for such certificates;

(b) prescribe the qualifications for enrolment on the

register and the fees therefor;

(c) provide for the examination of candidates for enrol-

ment, and prescribe the tees to be paid by examinees;

(d) prescribe the circumstances in which the name of any person may be removed from or restored to the register;

(e) provide for the establishment, constitution and procedure of a State Accountancy Board, consisting of persons representing the interests principally affected or having special knowledge of accountancy to advise His Highness on all matters of administration elating to accountancy, and to assist him in maintaining the standards of qualification and conduct of persons enrolled on the register; and

(f) provide for the establishment, constitution and procedure of local accountancy boards at such centres as His

Highness may select, to advise him and the Accountancy Board on any master that may be referred to them].

(3) Ever company shall at each annual general meeting appoint an auditor or audito. s to hold office until the next

annual general meeting.

(4) It an appointment of an auditor is not made, at annual general meeting, His Highness may, on the application or any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(5) The following persons; that is to say-

a director or officer of the company; and

(is a partner of such director or officer; and

(is) in the case of a company other than a private company, any person in the employment of such director or omcer.

shall not be appointed auditors of the company.

(6) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to its members either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting:

Provided that, if after notice of the intention to nominate an auditor has been given to the company, an annual general meeting is cailed for a date fourteen days or less after the notice has been given, the requirements of this section as to time in respect of such a notice shall be deemed to have been satisfied, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this section, be sent or given at the same time as the notice of

the annual general meeting.

(7) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.

(8) The directors may fill any casual vacancy in the office of the auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors (it any) may act

- (9) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.
- 145. (1) Every auditor of a company shall have a right of access at all times, to the books Powers and duties of auditors. accounts and vouchers company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors
- (2) The auditors shall make a report to the members of the company on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state-

(a) whether or not they have obtained all the informa-

tion and explanations they have required; and

(b) whether, in their opinion, the balance sheet referred to in the report s drawn up in conformity with the law; and

(c) whether such balance sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them

and as shown by the books of the company.

(3) In the case of a banking company, if the company has branch banks beyond the limits of the state it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the State.

146. (1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of Rights of preference chareholders etc., as to the company and the reports of the receipt and inspection of auditors and other reports as is possessed reports, etc.

by the holders of ordinary shares in the company.

(2 This section shall not apply to a private company, nor to a company registred before the commencement of this Act.

Carrying on business with less than the legal minimum of members.

147. I at any time the number or members of a company is reduced, in the case of a private company, below two, or in the case of any Liability for carrying on business with fewer than other company, below seven, and it carries seven or, in the case of a on business for more than six months private company, mem bers.

while the number is so reduced every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joinder in the suit of any other member.

Service and Authentication of Documents.

148. A document may be served on a company by leaving it at, or sending it by post to, the Service of document on registered office of the company. company.

149. A document may be served on the registrar by sending it to him by post or delivering it Service of documents on to him, or by leaving it for him at his registrar.

office.

150. A document or proceeding requiring authentication by a company may be signed by a Authentication of docudirector, secretary or other authorised officer of the company, and need not be under its common seal.

151. (1) The forms in the Third Schedule or forms as near thereto as circumstances admit shall Application and alterabe used in all matters to which those tion of tables, and forms,

and power to make rules as forms refer. to prescribed matters.

(2) His Highness may alter any of the tables and forms in the First Schedule; so that he does not increase the amount of fees payable to the registrar in the said Schedule mentioned, and may alter or add to the forms in the Third Schedule.

(3) Any such table or form, when altered, shall be published in the Government Gazette and on such publication shall have effect as if enacted in this Act but no alteration made by His Highness in Table A in the First schedule shall affect any company registered before the alteration; or repeal, as respects that company, any portion of that table.

(4) In andi ion to the powers herein before conferred by this section, His Highness may make rules providing for all or any matters which by this Act are to be prescribed by his

autho ity.

(5) Every such rule shall be published in the Government Gazette, and on such publication shall have effect as if enacted in this Act.

Arbitration and Compromise.

Power for companies to arbitration, in accordance with the law of Arbitration for the time being in force, an existing or future difference between itself

and any other company or person.

(2) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(3) The provisions of the law of Arbitration for the time being in force other than those restricting the application of the Act in respect of the subject matter of the arbitration, shall apply to all the arbitrations between companies and

persons in pursuance of this Act.

Power to compromise posed between a company and its creditors with oreditors and memoral posed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liqu dator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the

Court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors or on all members, or class of members as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contribu-

(3) In this section the experession "company" means any

company liable to be wound up under this Act.

Conversion of private company into public company.

154. (1) A private company may, subject to any thing Conversion of private contained in its memorandum or articles by a special resolution and by filing with

the registrar a copy of such resolution and also such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a duly verified declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company.

(2) Upon the filing of the documents mentioned in subsection (1), the registrar shall record the change in his books

relating to the company.

PART V.

WINDING UP.

Preliminary.

Mode of winding up.

155. 1) The winding up of a company may be either—

(i) by the Court; or

(ii) voluntary; or

(iii) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of thes modes.

Contributories.

Libility as contributories of present and past member, shall subies of present and past ject to the provisions of this section, be
liable to contribute to the assets of the
company to an amount sufficient for payment of its debts and
liabilities and the costs, charges and expenses of the winding
up, and for the adjustment of the rights of the contributories
among themselves, with the qualifications following (that is
to say)

(i) a past member, shall not be liable to contribute if he has ceased to be a member for one year or upwards befo e

the commencement of the winding up;

(ii) a past member, shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are un-

able to satisfy the contributions required to be made by them in pursuance of this Act.

(iv) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member;

(v) in the case of a company limited by guarantee, no contribtion shall be required from any member xceeding the amount undertaken to be contributed by him to the assets of

the company in event of its being wound up;

(vi) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy o contract is restricted, or whereby the funds of the company are alone made

liable in respect of the policy or contract;

- (vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustments of the rights of the contributories among themselves.
- (2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contr buted by him to the assests of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

157. In the winding up of a limited company any directors director whether past or present, whose whose liability is unlimited. liability is, in pursuance of this Act, unlimited, shall, in addittion to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up

a member of an unlimited company:

Provided that-(i) a past director shall not be liable to make such

further contribution if he has ceased to hold office or a year or upwards before the commencement of the winding up;

(ii) a past director shall not be liable to make such further contribution in respect of any debt or liability of the

company contracted after he ceased to hold office; (iii) subject to the articles a director shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to

satisfy the debts and liabilities of the company, and the

costs, charges and expenses of the winding up.

158. The term "contributory" means every person liable to contribute to the assest of a company Meaning of "contribuin the event of its being wound up, and, tory". in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

159. The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable Nature of liability of conat the times when calls are made for enforcing the iability.

160. (1) If a contributory dies either before or after he Contributories in case of has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the legal representatives or heirs make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether moveable or immoveable, or both and of compelling payment thereout of the money due.

161. If a contributory is adjudged insolvent either before Contriburtes in case of or after he has been placed on the list

of contributories, theninsolvency of member.

(1) his assignees shall represent him for al the purposes of the winding up and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the state of the insolvent the estimated value of his liability to future calls

as well as calls already made.

Winding up by Court.

162. A company may he wound Oircumstances in which company may be wound up up by the Courtby Court.

(i) if the company has by special resolution resolved that the company be wound up by the Court:

(ii) if default is made in filing the statutory report or in

holding the statutory meeting

(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

(iv) if number of members is reduced, in the case of a private company, below two or, in the case of any other

company, below seven:

(r) if the company is unable to pay its debts:

(vi) if the Court is of opinion that it is just and equitable that the company should be wound up:

163. A company shall be deemed to be unable to pay Company when deemed its debts-

(i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundered rupees then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(ii) if execution or other process issued on a decree or order of any Court in favour of a creditor of the

company is returned unsatified in whole or in part; or

(iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

164. Where the High Court makes an order for winding up a company under this Act, it may, if Winding up may be reit thinks fit, direct all subsequent proceedferred to District Court. ings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding up the company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

165. If during the progress of a winding up in a District

Court it is made to appear to the High Court that the same could be more con-Transfer of winding up veniently prosecuted in any other District from one District Court to Court having jurisdiction to wind up another.

companies, the High Court may transfer the same to such other Court, and thereupon the winding up shall proceed in such other District Court.

166. An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, Provisions as to applicaeither by the company or by any creditor tion for windig up. or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately :

Provided that

(a) a contributory shall not be entitled to present a petition for winding up a company unless-

(i) either the number of members is reduced, in the case of a private company, below two, or, in the

case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory or some of them either were originaly allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(b) a petition for winding up a company on the ground of default on filing the statutory report or in holding the statu-tory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last days on which the meeting ought to have been

held;

(c) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a trima facie case for winding up has been established to the satisfaction of the Court.

An order for winding up a company shall operate Riffeet of winding up in favour of all the creditors and of all the contributories of the company as if made order.

on the joint petition of a creditor and of a contributory.

168. A winding up of a company by the Court shall be deemed to commence at the time of the Commencement of windpresentation of the petition for the winding ing up by Court.

up. 169. The Court may, at any time after the presentation Court may grant in. of the petition for winding up a company under this Act, and before making an order junction. for winding up the company upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

170. (1) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hear-Powers of Court on bearing petition. ing conditionally or unconditionally, or make any interim order or any other order that it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the de ault.

171. When a winding up order has been made, no suit or Sults stayed on wind. other legal proceeding shall be proceeded ing up order. with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.

172. (1) On the making of winding up order, it shall be the duty of the company forthwith to file Copy of winding up order to be filed with with the registrar a copy of the order, and Begistrar. the petit oner in winding up proceedings

may so file a copy.

(2) On the filing of the copy of a winding up order, the registrar shall make a minute thereof in his books relating to the company, and shall notify in the Government Gazette that such an order has been made.

(3) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of

the company is continued.

The Court may at any time after an order for winding up, on the application of any creditor Power of Court to stay or contributory, and on proof to the satiswinding up. faction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit,

174. The Court may, as to al matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved Court may have regard to wishes of creditors or contributories.

to it by any sufficient evidence.

Official Liquidators.

175. (1) For the purpose of conducting the proceedings in winding up a company and perform-Appointment of official ing such duties in reference thereto as Hquidators.

Court may impose, the Court may appoint a person or persons to be called an official liquidator or official liquidators.

(2) The Court may make such an appointment provisionally at any time after the presentation of a petition and

before the making of an order for winding up.

(3) If more persons than one are appointed to the office of official liquidator the Court shall eclare whether any act by this Act required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons.

(4) The Court may determine whether any, and what, security is to be given by any official liquidator on his

appointment,

(5) The acts of an official liquidator shall be valid notwithstanding any defect that may afterward be discovered in his appointment: Provided that nothing in this sub-section shall be deemed to give validity to acts done by any official liquidator after his appointment has been shown to be inva id.

(6) A receive shall not be appointed of assets in the hands

of an official liquidator.

Resignations, removals removed by the Court on due cause shown.

(2) Any vacancy in the office of an official liquidator

appointed by the Court shall be filled up by the Court

(3) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

177. The official liquidator shall be described by the style of the official liquidator of the particular company in respect o which

he is appointed, and not by his individual name.

178. (1) The official liquidator shall take into his custody,

Custody of company's or under his control, all the property

effects and actionable claims to which the

company is or appears to be entitled.

(2) If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company

shall be deemed to be in the custody of the Court.

179. The official liquidator shall have power, with Powers of official li- the sanction of the Court, to do the following things:—

(a) to institute or defend any suit or prosecution, or other

legal proceeding, civil or criminal, in the name and on behalf of the company;

(b) to carry on the business of the company so far as

be necessary for the beneficial winding up of the same;

(c) to sell the immoveable and moveable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the

company's seals;

(e) to prove, rank and claim in the insolvency of any contributory, for any ba ance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the

other separate creditors;

(f) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill, hundi or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(g) to raise on the security of the assets of the company

any money requisite;

(h) to take out, in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator to thimself;

(i) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Discretion of Official liquidator may exercise any of the above powers without the sanc on or intervention of the Court, and, where an official liquida or is provisionally appointed, may limit and restrict his powers by the order appointing him.

181. The official liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court pleader entitled to appear before the Court to assist him in the performance of his

duties: Provided that, where the official liquidator is an atorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

- 182. The official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he hall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may subject to the control of the Court, personally or by his agent inspect any such books.
- 183. (1) Subject to the provisions of this Act the official Exercise and control of liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its credito s, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting.

(2) The official liquidator may summon general meetings of the creditors or codtributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolutions, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular

matter arising in the winding up.

- (4) Subject to the provisions of this Act, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.
- (5) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

Ordinary Powers of Court.

Settlement of list of contributories and application of assets.

The contributories and application of members in all cases where rectification is required in pursuance of this Act and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

185. The court may, at any time after making winding Power to require delive. up order, require any contributory for the ry of property. time being settled on the list of contribuand any trustee, receiver, banker, agent, or officer tories of the company to pay, deliver, surrender or transfer forthwith or within such time as the Court directs, to the official liquidator any money, property or documents in his hands to which the company is prima facie entitled.

186. (1) The Court may, at any time after making a wind-Power of Court to make ing up order, make an order on any contributory for the time being settled on the calls. list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursu-

ance of this Act.

(2) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any d rector whose liability is unlimited or to his estate the like allowance:

Provided that, in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of

set-off against any subsequent call.

187. (1) The Court may, at any time a ter making a Power of Court to make winding up order, and either before or after it has ascertained the sufficiency of cells. the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves.

(2) In making the call the Court may take into consideration the probability that some of the contributories

may partly or wholly fail to pay the call.

188. The Court may order any contributory, purchaser Power to order payment or other person from whom money is due to the company to pay the same into a bank named by it, as the case may be, or any branch thereof, respectively, to the account of the official liquidadator, instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account paid and delivered into the bank named under section 188 or any branch thereof respectively, in the event of a company being wound up by the Court, shall be subject in all respects to the orders

of the Court.

190. (1) An order made by the Court on a contributory order on contributory shall (subject to any right of appeal) be conclusive evidence. conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all

proceedings whatsoever.

191. The court may fix a time or times within which Power to exclude creditors creditors are to prove their debts or claims, not proving in time. or to be excluded from the benefit of any distribution made before those debts are proved.

192. The Court shall adjust the rights of the contributories

Adjustment of rights of among themselves, and distribute any
surplus among the persons entitled thereto.

Power to order costs.

The Court may, in the event of the assets being insufficient to satisfy the liabil ties, make on order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

194. (1) When the affairs of a company have been completely wound up, the Court shall make an o der that the company be dissolved from the date of the order, and the company shall be

dissolved accordingly.

(2) The o der shall be reported within fifteen days of the making thereof by the official liquidator o the registrar, who shall make n his books a minute of the dissolution of the company.

(3) If the official liquidator makes default in complying with the requirements of this section, he shall be table to a fine not exceeding fifty rupees for every day during which he is in default.

Extraordinary Powers of Court.

195. (1) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or uspected to

suspected of having property of company.

have in his possession any property of the company, or supposed to be indebted any person whom the Court deems capable

to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or

property of the company.

(2) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to

sign them.

(3) The Court may require him to produce any documents in his custody or power reating to the company; but, where he claims any ien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and

brought before the Court for examination.

196. (1) When an order has been made for winding up

Power to order public examination of promoters, directors, etc.

a company by the Court, and the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any person in the promotion or

formation of the company or by any director or other officer of the company in relation to the company since its formation the Court, may, after consideration of the application, direct that any person who has taken any part in the promotion or tormation of the company, or has been a director, manager or other officer of the company shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director, manager or other officer thereot.

(2) The official liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sacutioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any person entitled

to appear before the Court,

4) The Court may put such questions to the person

exam ned as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or

allow to be put to him.

- (6) A person ordered to be examined under this section may at his own cost employ any perso entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit
- (7) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.
- (8) The Court may, if it thinks fit, adjourn the examination from time to time.
- (9) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court, being a Registrar, or Deputy Registrar, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the exmination is held.
- Power to arrest abscood. Winding up order on proof of probable cause for believing that a contributory is about to quit the State or otherwise to abscond or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the Court may or ler.

Saving of other proceed. be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Enforcement of and Appeal from orders.

199. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit

pending therein may be enforced

200. Any order made by a Court for or in the course of Order made in any owner the winding up of a company shall be to be enforced by other enforced in any place in the State other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

Mode of dealing with order to be enforced by another Court, a certified copy of the order so mad shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made, and thereupon the last mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

Re-hearings of and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction.

Voluntary winding up.

203. A company may be wound up voluntarily:-

Circumstances in which company may be wound ap voluntarily.

(1) when the period (if any) fixed for the duration of the

company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily.

(2) if the company resolves by special resolution that the

company be wound up voluntarily;

(3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

204. A voluntary winding up shall be deemed to com-Commencement of volun. mence at the time of the passing of the resolution authorising the winding up.

205. When a company is wound up voluntarily, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary

in its articles, continue until it is dissolved.

Notice of any special resolution or extraordinary resolution for winding up a company voluntary. tarily shall be given by the company within ten days of the passing of the same by advertisement in the Government Gazette, and also in some newspapers (if any) circulating in the district where the registered office of the company is situate.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a

like penalty,

207. The following consequences shall ensue on the volunconsequences of volun. tary winding up of company:—

(i) the assests of the company shall be applied in satisfaction of its liabilities pari passu and subject thereto, shall unless the article otherwise provide, be distributed among the members according to their rights and interests in the company;

(12) the company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company and may fix the re-

muneration to be paid to him or them;

(iii) on the appointment of a liquidator, all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof;

(iv) the liquidator may, without the sanction of the company, exercise all powers by this Act given to the official

liquidator in a winding up by the Court;

(v) the liquidator may exercise the powers of the Court under this Act of settling a list of contributories and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves;

(vi) the list of contributories shall be prima facie evidence of the liability of the persons named therein to contribu-

tories;

(vii) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined by the company at the time of their appointment, or in default of such determination by any number not less than two:

(viii) if from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory,

appoint a liquidator; and

(ix) the Court may, on cause shown, remove a liquidator

and appoint another liquidator.

(1) The liquidator in a voluntary winding up shall, within twenty-one days after his appoint-Notice by liquidator of ment, file with the registrar a notice of his his appointment. appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default con-

tinues.

209. (1) Every liquidator appointed by a company in a voluntary winding up shall, within seven Rights of creditors in days from his appointment, send notice by a voluntary winding up. post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than twenty-one days nor more than one month after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the Government Gazette and once at least in some newspaper (if any) circulating in the district where the registered office, or principal place of business of the company was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the Court for the appointment of any person as liquidtor in the place of, or jointly with, the liquidator appointed by the company, and, if the creditors so resolve, and application may be made accordingly to the Court at any time not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting:

Provided that the Court may, by order at any time, extend the time for making an application under this sub-

section for such period as the Court thinks proper.

(3) On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator or jointly with the liquidator appointed by the company, or such other order as, having regard to the interest of the creditor and contributories of the company, may seem just.

(4) The Court shall make such order as to the costs of the application as it may think fit, and, if it is of opinion that, having regard to the interests of the creditors in the liquidation there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the appli-

cant.

210. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be called by any contributory or, if there were more liquidators than one,

by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Delegation of authority to appoint liquidators.

Delegation of authority to appoint liquidators.

The point liquidators of any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised.

(2) Any act done by creditors in persuance of any such delegated power shall have the same effect as if it had been done by the company.

Arrangement when binding on creditors.

Arrangement when bindwound up voluntarily and its creditors
shall, subject to any right of appeal under
extraordinary resolution, and on the creditors if acceded to by
three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just,

amend, vary or confirm the arrangement.

213. (1) Where a company is proposed to be, or is in

Power for liquidators to sceept shares etc., as a consideration for sale of property of company.

course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section

sold to another company (in this section called the transferee company) the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interest in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company, may, in lieu of receiving cash, shares, policies or other like interest, or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special esolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of special resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereinafter provided.

(4) If the liquidator elects to purchase the member's interest, the purchase-money must be paid before the company is dissolved, and be raised by the liquidator in such manner

as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purpose of this section by rea on that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

sanctioned by the Court.

214. (1) The price to be paid for Ithe purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by

arbitration.

(2) The provisions of the law of arbitration for the t me being in force, other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

215. (1) Where a company is being wound up voluntarily,

the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up, or to exercise as respects the enforcing of calls, or any other matters, all or any of the powers which the Court might exercise if the

company were being wound up by the Court.

(2 The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit. or may make such other order on the application as the Court thinks just.

216. (I Where a company is being wound up voluntarily, the liquidator may, form time to time, summon general meetings of the company for the purpose of obtaining the sanction of

the company by special or extraordinary resolution or for any

other purposes he may think fit.

(2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting a statement in the prescribed form containing the prescribed particulars with respect to the proceedings in and the position of the liquidation.

217. (1) In the case of every voluntary winding up as soon as the affairs of the company are fully wound up, the liquidator shall make up an

account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement, specifying the time, place and object thereof and published one month at least before the meeting in the manner specified in section 206.

(3) Within one week after the meeting, the liquidator shall file with the registrar a return of the holding of the meeting, and of its date, and in default of so doing, shal be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(4) The registrar on the filing of the return shall forthwith register it, and, on the expiration of three months from the registration of the return, the company shall be deemed

to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under sub-section (4) is made, within twenty-one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

218. All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, Oost of voluntary shall be payable out of the assets of the comliquidation.

pany in priority to all other claims at the date of the winding up. The voluntary winding up of a company shall not

Saving for rights of credi. bar the right of any creditor or contributory to have it wound up by the Court, tors and contributories. if the Court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

220. Where a company is being wound up voluntarily, and an order is made for winding up by

proceedings of voluntary the Court, the Court, may, if it thinks fit by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

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Winding up subject to supervision of Court.

221. When a company has by special or extraordinary resolution resolved to wind up voluntarily Power to order winding voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

222. A petition for the continuance of a voluntary winding up subject to the supervision of Effect of petition for winding up subject to the Court shall, for the purpose of giving supervision. jurisdiction to the Court over suits, be

deemed to be a petition for winding up by the Court.

223. The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of Court may have regard to wishes of creditors and contriburories. liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

224. (1) Where an order is made for a winding up subject to supervision the Court may by Power for Court to the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the re-

moval, or by death or resignation.

225. (1) Where an order is made for a winding up sub-Effect of supervision ject to supervision, the liquidator may, order. subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company

were being wound up altogether voluntariy.

(2) Except as provided in sub-section (1), and save for the purposes of section 196, any order mad by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for wind ng up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up

the company altogether by the Court.

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

226. Where an order has been made for the winding up

Appointment in certain cases of voluntary liquida. tor to office of official liquidators.

of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last mentioned order or by any subsequent

order appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court.

Supplemental Provisions.

227. (1) In the case of voluntary winding up, transfer of shares, except transfers made to or with the sanction of 'he liquidator, Avoidance of transfers, and every alteration in the status of the etc., after commencement members of the company made after the of winding up.

commencement of the winding up shall be void.

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) o the company, and every transfer shares, or alteration in the status of its members, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

228. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the Debts of all description law of insolvency) all debts payable on a to be proved.

contigency, and all claims against the company, present or future, certain or contigent, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contigency or for some other reason do not bear a certain value.

229. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secur-Application of insoled and unsecured creditors and to debts provable and to the valuation of annuties

vency rules in winding up oi insolvent companies.

and future and contigent liabilities as are in force for the t me being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

230. (1) In a winding up there shall be paid in priority

to all other debts-Preferential payments.

(a) all revenue, taxes, cesses and rates, whether payable to the state or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date;

(b) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees

for each clerk or servant; and

(c) all wages of any labourer or workman, not exceeding five hundered rupees for each whether payable for time or piecework, in respect of services rendered to the company within the two months next before the said date.

(2) The toregoing debts shall

(a) rank equally among themselves and be paid in full unless the assets are insufficient to meet them; in which case

they shall abate in equal proportion; and

(b) so ar as the assets of the company availale for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the cost and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the as ets are

sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereo;

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is

made.

(5) The date hereinbefore in this section referred to is-

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and

(b) in any other case, the date of the commencement of

the winding up.

231. (1) Any transfer, delivery of goods, payment, execution or other act relating to property which Fraudulent prefere ce would, if made or done by or against an individua, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company be deemed, in the event of its being wound up, fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and a resolution for winding up, in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an

individua'.

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors

shall be void.

(1) Where any company is being wound up by or subject to the supervision of the Court, of certain Avoidance any at achment, dis'ress or execution stachments, executions, put in force without leave of the Court eto. against the estate or effects of the company after the commencement of the winding up shall be

(2) Nothing in this section applies to proceedings by

the Government.

233. Where a company is being wound up a floating charge on the undertaking or property of the company created within three Effect of floating charge. months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in codsideration for, the charge, together with interest on that amount at the rate of five per cent. per

(1) The liquidator may, with the sanction of the annum. 234. Court when the company is being wound up by the Court or subject to the supervi-General scheme liquidation may be sancsion of the Court, and with the sanction of an extraordinary resolution of the company in the case tioned.

of a voluntary winding up, do the following things or any of them:-

(i) pay any classes of creditors in full;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the

company may be rendered liable;

(iii) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the relating to or affecting the assets of the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers.

235. (1) Where, in the course of winding up a company, it

appears that any person who has taken part Power of Court to assess in the formation or promotion of company, dam ges against delinor any past or present director, manager or iquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misseasance or breach of trust as the Court thinks just

(2) This section shall apply notwithstand ng that the offence

is one for which the offender may be criminally responsible.

(3) The Limitation Act shall apply to an application under

this section as if such application were a suit.

236. If any director, manager, officer or contributory of any company being wound up destroys, Penalty for f leification mutilates, alters or falsifies or fraudulently of books. secretes any books, papers or securities, or makes, or is privy to the making of, any false or fraudulent entry in any regis er book

of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

237. (1) If it appears to the Court, in the course of a winding up by or subject to the supervision of the Court, that any past or present Prosecution of delinquent directors, etc. director, manager officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding up, or of its own motion, direct the official liquidator or the liquidator (as the case may be) to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

(2) If it appears to the liquidator, in the course of a voluntary winding up, that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the

assets of the company in priority to all other liabilities.

If any person, upon any examination upon oath authorised under this Act or in any affidavit, Penalty for false evidnee. deposition or solemn affirmation in or about the winding up of any company under this Act or otherwise in or about any matter arising under this Act intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

239. (1) Where by this Act the Court is authorised in relation to winding up to have regard to the wishes of creditors or contributories, as Meetings to ascertain proved to it by any sufficient evidence, the Court may, if it thinks fit, for the purpose of ascertaining hose wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the

value of each creditor's debt.

(3) In the case of contributories, regard shal be had to the number of votes conferred on each contributory by the articles.

240. Where any company is being wound up all documents of the company and of the liquidators shall, as between the contributories of Documents of company the company, be prime faces evidence of

truth of all matters purporting to be therein recorded.

241. After an order for a winding up by or subject to the supervion of the Court, the Court may make such order for inspection by creditors and contributories of the company of the possession of the company may be inspected by creditors or contributories accordingly; but not further or otherwise.

242. (1) When a company has been wound up and is about to be dissolved, the documents of the company. company and of the liquidators may be disposed of as follows (that is to say):—

(a) in the case of a winding up, by or subject to the supervision of the Court, in such way as the Court directs;

(b) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

(2) After three years from the dissolution of the company, no responsibility shall rest on the company, or the liquidators or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

243. (1) Where a company has been dissolved, the Court power of Court to decrete dissolution of company the date of the dissolution, on an application of the campany or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceelings may be taken as might

have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall he liable to a fine not exceeding fifty rupees for every

day during which the default continues.

Information as to pen after its commencement, the liquidators shall, at such intervals as may be prescribed, until the winding up is concluded, file with the registrar a statment in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed tee, to inspect the statement, and to receive a copy thereof or extract thereform; but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under 'section 140 of the Ranbir Dand Bidhi, and shall be punishable accordingly on the application of the liquidator.

(3) If a liquidater fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for each day during which the default

continues.

- 245. (1) Any affidavit required to be sworn under the Court or person before provisions or for the purposes of this Part whom affidavit may be may be sworn in the State, or elsewhere within the dominions of His Majesty, before any Court, Judge or person lawfully authorised to take and receive affidavits, or in any part of India other than British India before any Court authorised or continued by the Governor General in Council, or in any place outside His Majesty's dominions before any of His Majesty's Consuls or Vice-Consuls.
- (2) All Courts, Judges, Justices, Commissioners and persons acting judicially in the State shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Kules.

Power of High Court to rules consistent with this Act and with the make rules. Code of Civil Procedure, concerning the mode of proceedings to be had for winding up a company in such Court and in the Courts subordinate thereto and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-division of the shares of a company, and shall make rules providing for all matters relating to the winding up of companies which, by this Act are to be prescribed.

power, the High Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the matters following, to

be exercised or performed by the official liquidator, and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of—

(a) holding and conducting meetings to ascertain the

wishes of creditors and contributories;

(b) settling lists of contributories and rectifying the register of members where required, and collecting and apply ng the assets;

(c) requiring delivery of property or documents to

the liquidator;

(d) making calls;

(e) fixing a time within which debts and claims must

be proved:

Provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

Removal of defunct Companies from Register.

247. (1) Where the registrar has reasonable cause to Registrar may etrike de- believe that a company is not carrying funct company off register. on business or in operation, he shall send to the company by post a letter inquiring whether

the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter re erring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Government Gazette with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer from the company to he effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Government Gazette, and send to the company by post a notice that, a the expiration of the three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off

the register and the company will be dissolved.

(4) If, n any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is ac ing or that the affairs of the company are fully

wound up, and the returns required to be made by liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the Government Gazette and send to the company a like notice as is provided in the last preceding sub-section.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Government Gazette, and, on the publication in the Government Gazette of this notice, the company shall be dissolved: Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherewise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have cotinued in existance as if its name had not been struck off and the Court may by the order give such directions and make provisions as seem just for placing the company and other persons in the same position as nearly as

may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director, manager or other officer of the company, or, if there is no director, manager or other officer of company whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum, in the addressed to him at the address mentioned

memorandum.

PART VI.

REGITRATION OFFICE AND FEES.

248. (1) For the purposes of the registratisn of companies under this Act, there shall be offices at such places as His Highness Registration affices.

thinks fit, and no company shall be registered except at an office within the province in which, by the memorandum, the registered office of the company is declared to be established.

(2) His Highness may appoint such registrars and assistant registrars as he thinks necessary for the registration of companies under this Act, and may make regulations with res-

pect to their duties.

(3) The salaries of the persons appointed under this sec-

tion shall be fixed by His Highness.

(4) His Highness may direct a seal or seals to be prepared for the authentication of documents required for or connected

with the registration of companies.

(5) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by His Highness, not exceeding one rupee for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar on payment for the certificate, certified copy or extract, of such fees as His Highness may appoint, not exceeding three rupees for a certificate of incorporation, and not exceeding six annas for every hundred words or fractional part thereof required to be copied.

(6) Whenever any act is by this Act directed to be done to or by the registrar, it shall, until His Highness otherwise directs, be done to or by the existing registrar of joint-stock companies or in his absence to or by such person as His Highness may for the time being authorise; but, in the event of His Highness' altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as His Highness may appoint.

249. (1) There shall be paid to the registrar in respect

of the several matters mentioned in table B in the First Schedule the several fees therein specified, or such smaller fees as His Highness may direct.

(2) All fees paid to the registrar in pursuance of this Act shall be accounted for to the State.

PART VIL

PART VIII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

253. (1) With the exceptions and subject to the provi-Companies capable of sions mentioned and contained in this being registered. section,-

any company consisting of seven or more members, whether registered already or not, and being otherwise

duly constituted according to law;

may at any time register under this Act as an unlimited company or as a company limited by shares, or as a company limited by gaurantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up:

(2) Provided as follows:

(a) a company having the liability of its members limited by Act of the State and not being a joint-stock company as hereinafter defined, shall not register in pursuance of this section:

(b) a company having the liability of it members limited by Act of Parliament, Act of the Governor General in Council or Act of the State or by Letters Patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(c) a company that is not a joint-stock company as here nafter defind shall not register in pursuance of this section

as a company limited by shares;

(d) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting sum-

moned for the purpose;

(e) where a company not having the liability of its members limited by Act of Parliament, Act of the Governor General in Council or Act of the State or by Letters Patent is about to register as limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting;

(f) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be acompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a

member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(3) In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the

articles

Definition of 'joint-stock registration of companies as companies limited by shares a joint-stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock or divided and held partly in one way and partly in other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

255. Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the registrar the following docu-

ments (that is to say):-

(1) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(2) a copy of any Act of Parliament, Act of the Governor General in Council, Act of the State, Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company;

and

(3) if the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say):—

(a) the nominal share capital of the company and the number of shares into which it is divided or the

amount of stock of which it consists;

(b) the number of shares taken and the amount paid on each share;

(c) the name of the company, with the addition of

the word "Limited" as the last word thereof;

- (d) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.
- 256. Before the registration in pursuance of this Part of any company not being a joint-stock companies. company, there shall be delivered to the registrar—
- (1) a list showing the names, addresses and occupations of the directors of the company; and
- (2) a copy of any Act of Parliament, Act of the Governor General in Council, Act of the State, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company; and
- (3) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.
- 257. The lists of members and directors and any other Authentication of state. particulars relating to the company requirment of existing companies. ed to be delivered to the registrar shall be duly verified by a declaration of any two or more directors or other principal officers of the company.
- Registrar may require such evidence as he thinks necessary for the purpose of satisfiying himself whether any company proposing to be registered is or is not a joint-stock company as hereinbefore defined.
- On registration of bank. tence on the date of coming into force of this Act, proposes to register as a limit-ed ed company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.
- (2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which the notice is given, but not further or otherwise, the certificate of registration with limited

liability shall have no operation.

260. No fees shall be charged in respect of the registration in pursuance of this Part of a company, if it is not registered as a limited company, Exemption of certain companies from payment or if before its registration as a limited of tees. company, the liability of the shareholders

was limited by some Act of the State.

261. When a company registers in pursuance of this Part with limited liability, the word "Limited" Addition of "Limited" shall form and be registered as part of its name.

262. On compliance with the requirements of this Part with respect to registration, and on

Certificate of registration of existing companies.

mon seal.

payment of such fees, if any, as are payable under Table B in the First Schedule, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a com-

All property, moveable and immovable, including all interests and rights in, to and out of Vesting of property property, moveable, and immoveable including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

The registration of a company in pursuance of this Saving of existing Habili. Part shall not affect the rights or liabilities of the company in respect of any debt ties. or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration.

265. All suits and other legal proceedings which at the Continuation of existing time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property and effects of the company being insufficient to satisfiy the decree or order, an order may be obtained for winding up the company.

Effect of registration 266. When a company is registered in pursuance of this Part,—

(1) all provisions contained in any Act of Parliment, Act of the Governor General in Council, Act of the State, deed of settlement, contract of co-partnery, Letters Patent, or other instruments constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contain in registered articles;

(ii) all the povisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act subject as follows (that is to say):—

(a) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution;

(b) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered;

(c) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or Act of the Governor General in Council or Act of the State relating to the company;

(d) subject to the provisions of this section, the company shall not have power, without the sanction of His Highness to alter any provision contained in any Letters Patent relating to the company;

(e) the company shall not have power to alter any provisions contained in a Royal Charter or Letters Patent with respect to the objects of the com-

pany;
in the event of the company being wound up, every
person shall be a contributory, in respect of the
debts and liabilities of the company contracted
before registration, who is liable to pay or contribute to the payment of any debt or liability of the
company contracted before registration, or to pay
or contribute to the payment of any sum for the
adjustment of the rights of the members among

themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency af any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply;

(iii) the provisions of this Act with respect to-

(a) the registration of an unlimited company as

limited;

(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

that a portion of its share capital shall not be capable of being called up except in the

event of winding up;

shall apply notwithstanding any provisions contained in any Act of Parliament, Act of the Governor General in Council, Act of State, Royal Charter, deed of settlement, contract of co-partnery, Letters Patent or other instrument, constituting or regulating the company;

(iv) nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent, or other instument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and

are not authorised to be altered by this Act;

(v) nothing in this Act shall derogate from any lawful power of altering its constitution or regulations which may, by virtue of any Act of Parliament, Act of the Governor General in Council, Act of the State, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, be vested in the company.

Power to embatitute pany registered in pursuance of this Part memorandum and articles may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to comfirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section with the following modi-

fications:—

(a) there shall be substituted for the printed copy of the altered memorandum required to be filed with the registrar a printed copy of the substituted memorandum and

articles; and,

(b) on the registration of the alteration being certified by the registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the

company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company, not being an Act of Parliament, an Act of the Governor General in Council, Act of the State, a Royal Charter or Letters Patent.

Power of Court to stay or and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

269. Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

PART IX.

WINDING UP OF UNREGISTERED COMPANIES.

Meaning of "unregis- registered company" shall not include a company registered under this Act, but save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

Winding up of unregistered company may be wound up untered companies. Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

(1) an unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of winding up, be deemed to be registered in the province where its principal place of business is situate or, if it has a principal place of business situate in more than one province, then in each province where it has a principal place of business; and the principal place of business situate in that province in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company;

(15) no unregistered company shall be wound up under

this Act voluntarily or subject to supervision;

(iii) the circumstances in which an unregistered company may be wounded up are as follows (that is to say):—

 (a) if the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;

(b) if the company is unable to pay its debts;

(c) if the Court is of opinion that it is jut and equitable that the company should be wound up;

(iv) an unreg stered company shall for the purposes of

this Act, be deemed to be unable to pay its debts-

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, have served on the company by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal pro-

ses to be incurred by him by reason of the same;

(c) if execution or other process issued on a decree or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company,

ceeding, and against all costs, damages and expen-

is returned unsatisfied; and

d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act except that references in any such first-mentioned enactment to any such repealed enactment shall be read as reference to the corresponding provision (if any) of this Act.

272. (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or

winding up of unregistion be a contributory who is hable to pay of the companies. contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the

assets of the company all sums due from him in respect of

any such liability as aforesaid.

(2) In the event of any contributory dying or being adjudged insolvent, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories and to the assignees of insolvent contributories shall apply.

273. The provisions of this Act with respect to staying Power to stay or res. and restraining suits and legal proceedings ings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

274. Where an order has been made for winding up an Sults stayed on winding unregistered company, no suit or other legal proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court,

and subject to such terms as the Court may impose.

275. If an unergistered company has no power to sue Directions as to property and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order, or by any subsequent order, direct that all or any part of the property, moveable or immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or the part thereof, specified in the order shall vest accordingly; and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Provisions of this Part ed companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding up companies by the Court and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act but an unregistered company shall not, except in the event of

its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

PART X

COMPANIES ESTABLISHED OUTSIDE THE STATE.

277. (1) Every company incorporated outside the State, which at the commencement of this Act Requirements as to comhas a place of business in the State, and panies established outside every such company which after the commen ement of this Act establishes such a place of business within the State shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar in the province in which such place of business is situated .-

(a) a certified copy of the charter, statues or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified

translation thereof;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and managers (if any) of the

company;

(d) the names and addresses of some one or more persons resident in the State authorised to accept on behalf of the company service of process and any notices required to be served on the company; and, in the event of any alteration being made in any such instrument or in such address or in the directors or managers or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time, file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid, and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar of the province in which

the company has its principal place of business-

(i) in a case where by the law, for the time being in force, of the country in which the company is incorpora ed such company is required to file with the public authoritytan annual balance-sheet,—a copy of that balance-sheet: or

(ii) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated,—such a statement in the form of a balance-sheet as such company would, if it were a company formed and registerd under this Act be required to file in accordance with the provisions of this Act;

Provided that His Highness may, by notification in the Jammu and Kashmir Government Gazette subject to such restrictions and conditions, if any, as he may therein prescribe, exempt any such company or any class of such companies

from this requirement.

(4) Every company to which this section applies and which uses the word "Limited" as part of its name, shall,—
(a) in every prospectus inviting subscriptions, for its

shares of debentures in the State, state the country in which

the company is incorporated; and

(b) conspicuously exhibit on every place where it carries on business in the State the name of the company and the country in which the company is incorporated in letters easily

legible in English and Urdu characters, and

(c) have the name of the company and of the country in which the company is incorporated mentioned in legible English characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the

company.

(5) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

(6) For the purposes of this section—

(a) The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(b) the expression "place of business" includes a share

transfer or share registration office;

(c) the expression "director" includes any person occupying the position of director, by whatever name called and

(d) the expression "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(7) There shall be paid to the registrar for registering any document required by this section to be filed with him a

fee of five rupees or such smaller fee as may be prescribed.

PART XI.

SUPPLEMENTAL

Legal Proceedings, Offences, etc.

- (1) No Court inferior to that of a Magistrate of the first class shall try any offence against Cognizance of offences. this Act.
 - (2) Omitted.

(3) Notwithstanding anything in the Code of Criminal Procedure, every offence against this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.

279. The Court imposing any fine under this Act may direct that the whole or any part thereof be Applications of fines. applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the

person on whose information the fine is recovered.

280. When a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Power to recaire limited Court having jurisdiction in the matter company to give security may, if it appears that there is reason to for costs. believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

281. If, in any proceeding before any Court against a director of a company for negligence or Power of Court to breach of trust, it appears to such Court grant relief in certain that the director is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him either wholly or partly, from his liability on such terms as the

Court may think proper.

282. Whoever in any return, report, certificate, balance-Penalty for false state. sheet or other document, required by or for the purposes of any of the provisions of this Act wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

233. If any person or persons trade or busine s under any name or title of which Panulty for improper "Limited' is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding fifty rupe s for every day upon which that name or title has been used.

284. For the purposes of this Act the law of insolvency Punjab Law of insel. in force in the Punjab shall be treated as the law of the State

285 to 290. Omitted.

SCHEDULES.

THE FIRST SCHEDULE.

(See sections 2, 17, 18, 79, 266.)

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies Act, or any statutary modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Companies Act, if, and so far as, those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company

may be issued with such preferred, deferred or other special rights, or such restriction, whether in regard to div dend, voting, return of share capital, or otherwise, as the company may from time to time by special resolutions determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a seperate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall mutatus mutandis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 101 and 104 of the companies Act, as

may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of certificate for a share to one of several joint-holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to

evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien.

9. The company shall have a lien on evey share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in sespect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of the single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the director thinks fit, any share on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating, and demanding payment of such part of amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to

the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the share, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nomial amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen day's notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

13. The joint-holders of a share shall be jointly and

severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but

the directors shall be at liberty to waive payment of that

interest who ly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount

of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and transmission of shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the

directors shall approve:

I, A B of , in consideration of the sum of rupees paid to me by C. D. of (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [or shares] numbered in the undertaking called the Company, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, etc.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may

also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless:-

(a) a fee not exceeding two rupees is paid to the com-

pany in respect thereof; and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the

right of the transferor to make the transfer.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors, or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by

the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made; but the directors shall, in either case have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent person before the death or insolvency.

23. A person becoming entitled to share by reason of the death or insolveney of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of

the company.

Forfeiture of shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than

the expiration of fourteen days, from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forefeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolu-

tion of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment

in full of the nominal amount of the shares.

29. A duly verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money (if any), nor shall his title to the share be effected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by terms of issue of share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a

call duly made and notified.

Conversion of shares into stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up

shares into stock, and may with the like sanction re-convert

any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share-warrants), as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Share-warrants.

- 35. The company may issue share-warrants, and accordingly, the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share, and the amount of the stamp-duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.
- 36. A share-warrant shall entitle the bearer to the shares included in it, and the share shall be transferred by the delivery of the share-warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share-warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be have his name entered as a member in the register of mem-

bers in respect of the shares included in the warrant.

38. The bearer of a share-warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

39. Subject as herein otherwise expressly provided, no person shall, as bearer of a share-warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share-warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may, from time to time, make rules as to the terms on which (if they shall think fit) a new sharewarrant or coupon may be issued by way of renewal in case of

defacement, loss or destruction.

Alteration of Capital.

The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the

resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions wi'h reference to the payment of calls, lien, transfer, transmission, forfeiture and othe wise as the shares in the original share

capital.

44. The company may, by special resolution,-

(1) consolidate and divide its share capital into shares

of larger amount than its existing shares;

(b) by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, n. vertheless, to the provisions of paragraph (d) of sub-section (1) of section 50 of the Companies Act;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by

any person;

(d) reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section 77 of the

Companies Act.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

47. The above-mentioned general meetings shall be called

ordinary meetings; all other general meetings shall be called

extraordinary.

48. The directors may, whenever they think fit, call an extraordinary general meetings, and extraordinary general meetings shall also be called on such requisitions, or in default, may be called by such requisitionists, as provided by section 78 of the Companies Act. If at any time there are not within the State sufficient directors capable of acting to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be called by the directors.

Proceedings at General Meeting.

49. Fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall he given in manner, hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the nonreceipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordin-ary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and

fixing of the remuneration of the auditors.

No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided

three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present the meeting, if called upon the requisition of members, shall be dissolved in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall

preside as chairman at every general meeting of the company.

54. If there is no such chaiman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting; or is unwilling to act as chairman, the members present shall choose some one

of their number to be chairman.

55. The chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or

against, that resolution.

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at

which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have

one vote for each share of which he is the holder.

61. In the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of member.

62. A member of unsound mind or in respect whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such

committee or guardian may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by

him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions

of section 80 of the Companies Act is in force.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behaf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power of attorney or other authority (if any), under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than seven y-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of

proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve :-

Company, Limited.

being a in the district of "1 Company, Limited, hereby member of the as my proxy to vote for me of and on my behalf at the [ordinary or extraordinary, as the case may be general meeting of the company to be held

REGS. 61-73.]

on the thereof".

day of

and at any adjournment

Signed this

day of

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subsc. ibers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general

meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 85 of the Companies Act.

Powers and duties of Directors.

directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Companies Act or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of manag-

ing director or manager be determined.

73 The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the pur-

poses of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting

eral meeting.

74. The directors shall duly comply with the provisions of the Companies Act or any statutory modification thereof for the time being in force, and in particular with the provision in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it and to keeping a register of the directors, and to sending to the registrar an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital or conversion of shares into stock and copies of special resolutions and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books

provided for the purpose-

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and, of the directors and of committees of

directors;

and very director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors.

77. The office of director shall be vacated if the

(a) ceases to be a director by virtue of section 85 of the

Companies Act; or

(b) holds, or any partner of his, or the firm of which he
is a member, holds, any other office of profit under the company except that of managing director or manager; or

(c) is adjudged insolvent; or

- (d) is found lunatic or becomes of unsound mind; or
- (c) is concerned or participates in the profits of any con-

tract with the company; or

(f) is punished with imprisonment for a term exceeding

six months;

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director; but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

Rotation of Directors.

78. At the first ordinary meeting of the company, the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among them-

selves) be determined by lot.

80. A retiring director shall be eligible for re-elec-

tion.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated

office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors or such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is

to go out of office.

84. Any casual vacancy occurring on the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director. 1 2 54

- 85. b The directors shall have power at any time, and from time to time, to appoint a person as an additional director, who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.
- 86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he has become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds

three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appoin ted for holding the same, the directors present may chose one

of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their

body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations

that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings; if no such chairman is elected, or if at any meeting the chairman is not persent within five minutes after the time appointed for holding the same, the members present may choose one of their member to be a chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting

vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that their was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly approinted and was qualified to be a director.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors

to be justified by the profits of the company.

97. No dividends shall be paid otherwise than out ofprofits.

- 98. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.
- 99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the

like disceretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint-holders of any share, any one of them may give effectual receipts

for any dividends payable on the share.

101. Notices of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the

company.

Accounts.

103. The directors shall cause true accounts to be kept—

(a) of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place, and

(b) of the assets and liablities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place of places as the directors think fit, and shall always be open to the inspection of the directors.

whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

before the ompany in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before

such meeting.

107. The profit and loss account shall show, arranged under the most convenient heads, the amount of the gross income, distinguishing the several sources from which it has been derived, and amount of gross expenditure, distinguishing expenses of the establishment, salaries and other like matters. Every item of the expenditure fairly chargeable against the

year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and in cases where any item of the expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

108. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to

carry to a reserve fund.

109. A copy of the balance-sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

110. The directors shall in all respects comply with the provisions of sections 130 to 135 of the Companies Act, or any statutory modification thereof for the time being in force.

111. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Companies Act or any statutory modification thereof for the time being in force.

Notices.

112. (1) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the State) to the address, if any, within the State supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

113. If a member has no registered address in the State, and has not supplied to the company an address within the State for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

114. A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

115. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at the address (if any) in the State supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

116. Notice of every general meeting shall be given in some manner hereinafter authorised to (a) every member of the company (including bearers o share-warrants) except those members who (having no registered address within the State have not supplied to the company an address within the State for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or insolvency of a member, who, but for his death or insolvency, would be entitled to receive notice of the meeting. No other person shall be entitled to receive notices of general meeting.

TABLE B.

(See sections 249 and 262.)

TABLE OF FEES TO BE PAID TO THE REGISTRAR.

| | I—By a Company having a share capital. | Rs. | ۸. | P. | |
|----|---|-----|----|----|--|
| 2. | For registration of a company whose nominal share capital does not exceed Rs. 20,000, a fee of For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is | 40 | 0 | 0 | |
| | For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees | 20 | 0 | 0 | |
| | For every 10,000 rupees of nominal share capital, or part of 10,000 rupees after the first 50,000 rupees up to 10,00,000 | 5 | 0 | 0 | |
| | For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 10,00,000 rupees | 1 | 0 | 0 | |

Rs. A.

3. For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration.

Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into acc unt in the case of fees payable on an increase of share capital after registration, the

fees paid on registration.

For registration of any existing company, except such exempted companies as are by this Act from payment of fees in respect of registratration Act, the same fee as is charged under this for registring a new company.

1[5. For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed with the registrar by a reciever or the statement required to be filed with the registrar by the liquidator in a winding up

6. For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of

II. -By a company not having a share capital.

1. For registration of a company whose number of members, as stated in the articles of association, 40 0 0 does not exceed 20

2. For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100

3. For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.

For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of

For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable [in respect of such increase] if such increase had been stated in the articles of association at the time of registration .

For reduced fees in certain matters see Notification VI-L/91 Chapter I. Part L. Schedule Published in Government Gazette dated 2nd Phagan 1992. *Amended by Notification VI-L/91 Chapter I Part I Schedule published in

Government Pasette dated 2nd Phagan 1992,

500

5 0 0

100 0 **0**

400 0 0

Rs. A. P.

Provided that no one company shall be liable to pay on the whole a greater fee than Rs. 100 in respect of its number of members taking into account the fee paid on the first registration of the company.

companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new

company.

17. For filing any document by this Act required or authorised to be filed other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up

8. For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of

5 0 0

5 0 0

COUNCIL ORDER No. 308 of 1935.

Subject:—Revenue Minister's Memo No. 1113-C. I. M.-43, dated 2nd April 1935, regarding Draft Notification relating to Stamp duty or fee to be paid by the Companies applying for registration under section 25 of the Companies Act No. XI of 1977 in force in the State.

The fee to be paid under section 249 of the Jammu and Kashmir Companies Act No. XI of 1977 and Table 'B' of the said Act for the Registration of an Association, not for profit under section 26 of the said Act, when the number of members is stated in the Articles of Association to exceed twenty or to be unlimited shall not exceed Rs. 50.

9th May 1935.

¹For reduced fees in certain matters see Netification VI-L/91 Chapter I, Part I published in Government Gazette dated 2nd Phagan, 1992.

THE SECOND SCHEDULE.

(See section 98.)

STATEMENT IN LIEU OF PROSPECTUS.

filed by

LIMITED

pursuant to section 98 of the Companies Act.

Presented for filing by

THE COMPANIES ACT.

LIMITE .

STATEMENT IN LIEU OF PROSPECTUS.

| The nominal share capital of the company. | Rs. |
|---|---|
| Divided into | Shares of Rs. each. |
| Names, descriptions and addresses of direc- tors or proposed directors and of the managers or proposed managers. | |
| Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment. | |
| Number and amount of shares and de- bentures agreed to be issued as fully or partly paid up otherwise than in cash. | 1. Shares of Rs. fully paid |
| The consideration for the intended issue of those shares and debentures. | 2. Shares upon which Rs. per share credited as paid 3. Debentures Rs. 4. Consideration. |

| The nominal of share capital of the company. | | Re. | | | | |
|---|--|------|--|-------|--|--|
| Names and addresses of 'vendors of property purchased or acquired, 'or proposed to be purchased or acquired by the company. Amount in (cash, chares or debentures) payable to each separate vendor. | | | | - | | |
| Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for good will. | Total purchase Cash Shares Debentures Goodwill | | | Re. " | | |
| Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company or Rate of the commission | ibe " payable. ub- | | | | | |
| Estimated amount of preliminary expenses | Rs. | | | | | |
| Amount paid or intended to be paid to any promoter. | Name of promo | oter | | | | |
| Consideration for the payment | Consideration: | - | | | | |
| Dates of, and parties to every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement). | | | | | | |
| Time and place at which the contracts or copies thereof may be inspected. | | | | | | |

¹ For definition of vendor, see section 94 of the Companies Act.
2 See section 95 of the Companies Act.

The neminal share capital of the company.

Rs.

Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise by any person either to induce him to become, or to qualify him as a director, or otherwise for services ren ered ! y him or by the firm in connection with the promotion or formation of the company.

Whether the articles contain any provi- Nature of the provisions. sions precluding holders of shares or debentures receiving and inspecting balance-sheets or reports of the auditors or other reports.

(Signature of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

THE THIRD SCHEDULE.

FORM A.

(See; sections 6 and 151.)

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st.—The name of the company is "The Eastern Carrying Company Limited."

2nd.—The registe ed office of the company will be

situate in the province of Jammu.

3rd.—The objects for which the company is established are "the conveyance of passengers and goods between such places as the company may from time to time determine, and the doing all such other thing as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—The share capital of the company is two hundred thousand rupees, divided into one thou and

shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

| Names, | Number of shares taken by each Subscriber. | | | | | |
|----------------|--|-----|-----------|-----------|-----|-----|
| | | | | | | 200 |
| 1. A. B. of, M | erchant | ••- | •• | ••• | ••• | 25 |
| 2. C. D., ,, | ** | | •• | •• | | |
| 8. E. F., ,, | ,, | | | •• | | 30 |
| 4. G. 11., ,, | | | | | | 40 |
| | " | | | | | 15 |
| 5. I. J., " | ** | • • | • • | | | 5 |
| 6. K. L., ,, | ;, | | • • | •• | • | 10 |
| 7. M. N., ,, | ,, | •• | • • | •• | •• | 10 |
| | | | Total she | res taken | | 325 |

Dated the

day of

194

Witness to the above signatures,

X. Y., of

FORM B.

(See sections 7 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL.

Memorandum of Association.

Ist.—The name of the company is "The Mutual Srinagar Boats Marine Association, Limited".

2nd.—The registered office of the company will be

situate in Srinagar.

3rd.—The object for which the company is established are "the mutual insurance of boats belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object".

4th.—The liability of the members is limited.

5th—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the co ts, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one hundred rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in

pursuance of this memorndum of association.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of "2. C. D. of "3. E. F. of "4. G. H. of "5. I. J. ot "6. K. L. of "7. M. N. of

Dated the

day of

Witness to the above signatures.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

Number of Memb 18.

1. The company for the purpose of registeration is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business or the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any boat or share in a boat in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place,

as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be

called extraordinary. 7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, call an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office On receipt of the requisition the directors shall forthof the company.

with proceed to call a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members may themselves call a meeting.

Proceedings at General Meetings.

10. Fourteen days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing

of remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is):—if the members of company at the time of the meeting do not exceed ten in number the quorum shall be five; if they exceed ten, there shall be added to the above quoram one for every five additional members with this limitation, that no quorum shall in any case exceed ten.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if called on the requisition of the members shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall

be adjourned sine die.

14. The chairman (if any) of the directors shall preside

as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the nea

adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from

which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at leaset three members, a declartion by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the

meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

If any member is a lunatic or idiot, he may vote

by his committee or other legal guardian.

21. No member shall be entitled to vote at meeting unless all moneys due from him to the company have

been paid.

- 22. On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 30 of the Companies Act is in force. proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation under its common seal.
- 23. (1) No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as

proxy for a corporation.

(2) The instrument appointting him shall be deposited at the registered office of the company not less then forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the

following form:

Company, Limited,

, of being a Member of the hereby appoint

Company, Limited,

as my proxy, to vote for me

and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this

day of

Directors.

25. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall, for all the pur-

poses of the Companies Act be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Companies Act or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting: but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Elections of Directros.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

(Here insert rules as to mode in which business of insurance is to be conducted.)

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Companies Act or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "share holders," and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally, or by sending it by post to him to

his registered address.

31. Where a notice is sent by post, service af the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, Addresses and Descriptions of Subscribers.

" 1. A. B. of

" 2. C. D. of

" 3. E. F. of

" 4. G. H. of

" 5. I. J. of

" 6. K. L. of

" 7. M. N. of

Dated the

day of

19 .

Witness to the above signatures, X. Y., of

FORM C.

(See sections 7 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Snowy Range Hotel Company, Limited."

2nd.—The registered office of the company will be situate

in the Province of Kashmir.

3rd.—The objects for which the company is established are

"the facilitating travelling in the Snowy Range, by providing hotels and conveyances by water and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is member, or within one year afterwards for payment of the debts and liabilities of the company, contracted b fore he ceases to be a member, and the cost, charges and expenses of winding up the same and for the adjustment of the rights of the contributaries amongst themselves, such amount as may be required, not exceeding fifty rupees.

6th. -- The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares

of one hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

| Names, | Addresses | and Descrip | ptions of Su | bscribers. | | Number of shares taken by each Sub- scriber. |
|------------------|-----------|-------------|--------------------|------------|--|--|
| "1. A. B. of | | | | | | 200 |
| "2. C. D. of | | •• | | | | 25 |
| "3. E. F. of | | | | | | 30 |
| "4. G. H. of | : | | ••• | | | 40 |
| "5. I. J. of | | | | | | 15 |
| "6. K. L. of | | | | | | 5 |
| "7. M. N. of | •• | •• | | | | 10 |
| | | | Total shares taken | | | 325 |
| Dated the day of | | | | 19 | | |

Witness to the above signatures.

Articles of Association to accompany preceding Memorandum of Association.

1. The share capital of the company is five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

2. The directors may, with sanction of the company in general meeting, reduce the amount of shares in the com-

pany.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the com-

pany.

4. All the articles of Table A of the Companies Act shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

Merchant

"1. A. B. of

42. C. D. of

"3. E. F. of

"4. G. H. of

45. I. J. of

"6. K. L. of

"7. M. N. of

Dated the

day of

19

Witness to the above signatures. X. Y., of

FORM D.

(See sections 8 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Patent Stereotype Company.

2nd.—The registered office of the company will be situate

in the Province of Jammu.

3rd.—The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates of which method P. Q., of Jammu is the

sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set apposite our respective names.

| Names, Addresses | and Descript | ions of Subscri | bers. | Number of shares taken by each Subscriber. |
|------------------|--------------|------------------|-------|--|
| "1. A. B. of | | | | 3 |
| "2. C. D. of | | | | 3 |
| "3. E. F. of | | | | 1 |
| 4. G. H. of | | | | 2 |
| 5. I. J. of | | | | 2 |
| "6. K. L. of | | | •- | 1 |
| 7. M. N. of | | | | 1 |
| | To | tal shares taken | a | 12 |
| Dated the | | day of | | 19 |

Witness to the above signatures. X. Y., of

Articles of Association to accompany the preceding Memorandum of Association.

- The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.
- All the articles of table A of the Companies Act shall 2. be deemed to be incorporated with these articles, and to apply o the company.

Names, Addresses and Decriptions of Subscribers.

"I. A. B. of

, merchant.

"2. C. D. of

"3. E. F. of

"4. G. H. of

"5. I. J. of

"6. K. L. of

"7. M. N. of

Dated the

day of

19 .

Witness to the above signatures.

X. Y., of

FORM E.

AS REQUIRED BY PART II OF THE ACT.

(See section 32.)

Summary of Share Capital and Shares of the Company, Limited, made up to the day of the first ordinary general meeting in 19).

Nominal share capital Rs.

divided [shares of Rs. shares of Rs.

each.

of 19 which number must agree with the total shown in the list as held by existing members.

Number of shares issued subject to payment wholly in cash.

Number of shares issued as fully paid up otherwise than in cash

Ordinary or Rs. 200 or Rs 100), state the numbers and nominal values separately.

| Nurab of | er of shares issued as partly up to the ext per shares otherwise than in cash. | ent | |
|-------------|--|-----------|-----|
| | ¹ There has been called up on each—of shares | | Rs |
| | There has been called up on each-of shares | | Rs. |
| | There has been called up on each—of shares | | Rs |
| | ² Total amount of calls received, including payment on application and allotment | its } | Rs. |
| | Total amount (if any) agreed to be considered paid on shares which have been issued ful paid up otherwise than in cash | as lly | Rs |
| | Total amount (if any) agreed to be considered paid n shares which have been issued as partly paid up to the extent of per share | t- | Rs. |
| | Total amount of calls unpaid | | Rs. |
| | Total amount (if any) of sums paid by way of comission in respect of shares or debentures allowed by way of discount since date of languages. | or (| Rs |
| | Total amount (if any) paid on 3shares forfeited | | Rs. |
| | Total amount shares and stock for which shares are outstanding | are- | Rs. |
| | Total amount of share-warrants issued and surrendered respectively since date of last summan | n- | Re. |
| | Number of shares or amount of stock comprised i | n { | Rs. |
| | Total amount of debt due from the company in r spect of all mortgages and charges which are required to be registerd with the registra under this Act | e- r } | Rs. |

Where various amounts have been carled or there are shares or diffrent kinds, state them separately.

*Include what has been received on forfeited as well as on existing shares.

*State the aggregate number of shares forfeited.

List of persons holding shares in the Company, Limited, on the day of and of persons who have held shares herein at any time since the date of the last return, showing their names and addresses and an account of the shares so held.

| | AMES, | ADDRE | SSES ONS. | | , | ACCUONS | OF SE | ARRS. | |
|---------------|----------------|----------|----------------------|--|--|--|-------------------------------------|-------------------|----------|
| | | | ,6 | Number of shares held by existing Members at date of Esturn. | Particulars of Shares Transferred since the | date of the last return by persons to he are still Members | r shares ce the da sturn by p | members. | |
| Name in full. | Father's name, | Address. | Occupation or caste, | Number of shares h at date of Beturn. | aNamber. | Date of Registra- | Number. | Late of Registra- | Remarks. |
| | | | | | | | | | |

State the aggregate number of shares forfeited (if any).

The aggregate number of shares held, and not the distinctive numbers, must be stated and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

[•] When the shares are of diffrent classes, these columns may be sub-divided so that the number of each class held or transferred may be shown separately.

The date of registration of each transfer shall be given as well as the number of shares transfered on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be iserted in the Remarks column immediately opposite the particulars of each transfer.

Names and addresses of the persons who are the , Limited, on the directors of the 19 day of

Names.

Addresses.

Names and addresses of the persons who are the managers , Limited, on the of the day of

Names.

Addresses

Norz .- Banking companies must add a list of all the places of business.

, do hereby certify that the above list and summary truly and correctly states the facts as they day of 19. stood on the

(Signature)

(State whether director, manager or secretary.)

S. N. DAR. . . LL. Vakil iten wourt. SRINATION Kashmiell

FORM F. (See section 132.)

| | Rs. | A8. | 4 | R8. | A8. | 4 | | Rs. | A 8. | P. | Rs. | A8. | 14 |
|---------------------------------------|-----|-----|-------|-----|-----|---|--|-----|------|----|-----|-----|----|
| APITAL AND LIABILITIES. | | | 17.9% | į. | | | PROPERTY AND ASSETS. | | | | | | |
| PITAL- | | | | | | | FIXED CAPITAL EXPENDITURES. | | | | : | : | _ |
| uthorised Capital., shares of Bseach. | : | : | | - 4 | | | (Distinguishing as for as possi- ble between expenditure up- | | | | | | |
| sened Cap:talshares of Rs. | : | : | : | , : | | | leaseholds, plant, machine- ry furniture, development of property, patents, trade | . 4 | | | | | |
| Subscribed Capitalshares of Rseach. | : | : | : | | | | paid out of Capital during construction, etc. and stat- ing in every case the origi- | | | | | | |
| Amount called up at Rsper share. | : | -:_ | :_ | | | | ciation written off under each head.) | | | | | | |
| Less-Calls unpaid | : | : | : | | | | | | | | : | : | : |

| Add—Forfeited shares (amount paid up). | RESERVE FOND OR DEVELOPMENT FOND. | ANY SINKING FUND | ANY OTHER FUND OREATED OUT | OF NET PROFITS. | ANY PENSION OB INCURANCE FOND. | PROVISION FOR BAD AND DOUBT- | LOANS ON MORTGAGE OR MORT- | GAGE DEBENTURE DONDS. | LOANS OTHERWISE SECURED | (Stating the nature of security) | LOANS UNSECURED. | INTEREST . | Accrised on Montages Deben- | | UNGLAIMED DIVIDENDA | |
|--|--------------------------------------|------------------|----------------------------|-----------------|--------------------------------|------------------------------|----------------------------|-----------------------|-------------------------|----------------------------------|---------------------------|----------------------------|------------------------------|------------------|-------------------------------|----------------------------|
| : <u> </u> | ENT | : | UL | | OB | ė | ė | | : : | ıtàı | | -: | _ | . ea | | |
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| <u>: </u> | <u>:</u> | • | <u>:</u> | _ | : | - | <u>:</u> | | - | _ | _ | - | _ | | | |
| : | <u>:</u> _ | : | - | | : | - | <u>:</u> | | : | _ | | : | _ | _ | _ : | |
| (Commiss on or Brokerage paid for underwriting or | ng 8 a | | STORES AND SPARE GEAR | Loose Tools | LIVE-STOCK | STOOK IN TRADE | Stating mode of valuation, | BILL OF EXCHANGE | BOOK DEBIS | - | a Bank between those con- | of which the Bank is fully | secured and those considered | no security othe | the debtor's personal securi- | cases between debts consi- |
| : | | | : | : | : | : | | : | - | | | | _ | | | _ |
| : | | | : | : | | • | - | | <u>:</u> | _ | | _ | | _ | | _ |
| : : | | | | : | • | : | | : | : | | | | | | | |

| LIABILITIES | : | | | : | : | : | dered good and debts consi- | | | | |
|--|---|----|----|---|---|---|--|---|---|---|---|
| For Goods spplied | : | : | : | | | | due by director | | | | |
| ж Ехрепяев | : | : | : | | | | o of | | | | |
| " Acceptances | : | : | : | | | | | | | | |
| " Other Finance | : | : | : | | | | | | _ | | |
| | 1 | 1 | T | | | | | | | | |
| ADVANCE PAYMENTS AND UNEX- | | | | | | | ADVANOR8 | | : | : | : |
| (For the portion for which valu has still to be given, e. g., in the case of the following | | | | : | • | | (Recoverable in each or in kind or for value to be received, e.g., Rate, Taxes, Insurance, etc.) | | | | |
| Fire Insurance | | | | | | | INVESTMENTS | | : | : | : |
| | | | | | | | (Nature of Investment and mode of valuation, e. g., | | | | |
| PROFIT AND LOSS | | | | : | : | : | cost of market-value.) | _ | | | |
| Balance as previous Balance Sheet. | 1 | : | : | | | | INTEREST ACCRUED ON INVEST- MENTS. | | : | : | : |
| Less-Appropriation thereof | : | : | : | | | | CASH AND OTHER BALANCES. | | : | : | : |
| Balance brought forward | 1 | 1: | 1: | | | | Amount in hand | : | | , | |

| Profit since last Balance Sheet | (N. B.—These details need not be given if the same be con- | tained in a Profit and Logs account attached to the Balance Sheet.) | CONTINGENT LIABILITIES- | Claims against the Company not acknowledged as debts. | Moneys for which the Company is contingently liable. | Arrears of Camulative Preference Divinends. |
|---|---|--|-----------------------------------|--|---|---|
| : | | | | : | : | : |
| : | | | | • | <u> </u> | <u>:</u> |
| : | | | | <u>:</u> | | <u>:</u> |
| | | | 1: | | | |
| | | | - | - | | |
| | | | +: | + | | |
| Balances with Agents and Bankers (in detail showing | accounts, etc.) | Profit and Loss (giving, in the case of a debit balance, details as far as possible as | in the case of a credit balance.) | | | |
| • | | | | | | |
| : | | | ph (mark) or | | | |
| | | : | | | | |
| | | : | | | | |
| | | : | | | _ | |

1038 VERSITY LIBTHE COMPANIES ACT, 1977.

SCH. III.

FORM G.

(See section 136.)

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT, OR BENEFIT SOCIETIES.

The share capital of the company is Rs.

divided

into

shares of

each

The number of shares issued is Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.

The liabilities of the company on the thirty-first day of December (or thirtieth of June) were :-

Debts owing to sundry persons by the company.

Under decree, Rs.

On mortgages or bonds, Rs.

On notes, bills or hundies, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

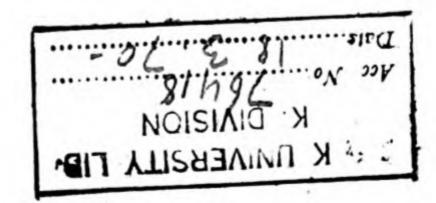
The assets of the company on that day were.-Government securities [stating them]., Rs. Bills of exchange, hundis and promissory notes, Rs.

Cash at the Bankers, Rs.

Other securities, Rs.

THE FOURTH SCHEDULE.

Omitted.



If the company has no capital divided into shares, the portion of the statement relating to capital and share must be omitted,

